

SUBCHAPTER E—PLANNING AND RESEARCH

PART 420—PLANNING AND RESEARCH PROGRAM ADMINISTRATION

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Subpart A—Administration of FHWA Planning and Research Funds

§ 420.101 What is the purpose of this part?

This part prescribes the Federal Highway Administration (FHWA) policies and procedures for the administration of activities undertaken by State departments of transportation (State DOTs) and their subrecipients, including metropolitan planning organizations (MPOs), with FHWA planning and research funds. Subpart A identifies the administrative requirements that apply to use of FHWA planning and research funds both for planning and for research, development, and technology transfer (RD&T) activities. Subpart B describes the policies and procedures that relate to the approval and authorization of RD&T work programs. The requirements in this part supplement those in 49 CFR part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 49 CFR part 19, Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

§ 420.103 How does the FHWA define the terms used in this part?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

FHWA planning and research funds include:

- (1) State planning and research (SPR) funds (the two percent set aside of funds apportioned or allocated to a State DOT for activities authorized under 23 U.S.C. 505);
- (2) Metropolitan planning (PL) funds (the one percent of funds authorized under 23 U.S.C. 104(f) to carry out the provisions of 23 U.S.C. 134);
- (3) National highway system (NHS) funds authorized under 23 U.S.C. 104(b)(1) used for transportation planning in accordance with 23 U.S.C. 134

and 135, highway research and planning in accordance with 23 U.S.C. 505, highway-related technology transfer activities, or development and establishment of management systems under 23 U.S.C. 303;

(4) Surface transportation program (STP) funds authorized under 23 U.S.C. 104(b)(3) used for highway and transit research and development and technology transfer programs, surface transportation planning programs, or development and establishment of management systems under 23 U.S.C. 303; and

(5) Minimum guarantee (MG) funds authorized under 23 U.S.C. 505 used for transportation planning and research, development and technology transfer activities that are eligible under title 23, U.S.C.

Grant agreement means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the relationship is to transfer a thing of value to the recipient or subrecipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303-5305 must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National Cooperative Highway Research Program (NCHRP) means the cooperative RD&T program directed toward solving problems of national or regional significance identified by State DOTs and the FHWA, and administered by the Transportation Research Board, National Academy of Sciences.

Procurement contract means a legal instrument reflecting a relationship between an awarding agency and a recipient or subrecipient when the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the awarding agency.

State Department of Transportation (State DOT) means that department, commission, board, or official of any State charged by its laws with the responsibility for highway construction.

Transportation management area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) and designated by the Secretary of Transportation or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Secretary of Transportation.

Transportation pooled fund study means a planning, research, development, or technology transfer activity administered by the FHWA, a lead State DOT, or other organization that is supported by two or more participants and that addresses an issue of significant or widespread interest related to highway, public, or intermodal transportation. A transportation pooled fund study is intended to address a new area or provide information that will complement or advance previous investigations of the subject matter.

Work program means a periodic statement of proposed work, covering no less than one year, and estimated costs that documents eligible activities to be undertaken by State DOTs and/or their subrecipients with FHWA planning and research funds.

§ 420.105 What is the FHWA's policy on use of FHWA planning and research funds?

(a) If the FHWA determines that planning activities of national significance, identified in paragraph (b) of this section, and the requirements of 23 U.S.C. 134, 135, 303, and 505 are being adequately addressed, the FHWA will allow State DOTs and MPOs:

(1) Maximum possible flexibility in the use of FHWA planning and research funds to meet highway and local public transportation planning and RD&T needs at the national, State, and local levels while ensuring legal use of such funds and avoiding unnecessary duplication of efforts; and

(2) To determine which eligible planning and RD&T activities they desire

to support with FHWA planning and research funds and at what funding level.

(b) The State DOTs must provide data that support the FHWA's responsibilities to the Congress and to the public. These data include, but are not limited to, information required for: preparing proposed legislation and reports to the Congress; evaluating the extent, performance, condition, and use of the Nation's transportation systems; analyzing existing and proposed Federal-aid funding methods and levels and the assignment of user cost responsibility; maintaining a critical information base on fuel availability, use, and revenues generated; and calculating apportionment factors.

(c) The policy in paragraph (a) of this section does not remove the FHWA's responsibility and authority to determine which activities are eligible for funding. Activities proposed to be funded with FHWA planning and research funds by the State DOTs and their subrecipients shall be documented and submitted for FHWA approval and authorization as prescribed in §§ 420.111 and 420.113. (The information collection requirements in paragraph (b) of § 420.105 have been approved by the Office of Management and Budget (OMB) under control numbers 2125–0028 and 2125–0032.)

§ 420.107 What is the minimum required expenditure of State planning and research funds for research development and technology transfer?

(a) A State DOT must expend no less than 25 percent of its annual SPR funds on RD&T activities relating to highway, public transportation, and intermodal transportation systems in accordance with the provisions of 23 U.S.C. 505(b), unless a State DOT certifies, and the FHWA accepts the State DOT's certification, that total expenditures by the State DOT during the fiscal year for transportation planning under 23 U.S.C. 134 and 135 will exceed 75 percent of the amount apportioned for the fiscal year.

(b) Prior to submitting a request for an exception to the 25 percent requirement, the State DOT must ensure that:

(1) The additional planning activities are essential, and there are no other reasonable options available for fund-

ing these planning activities (including the use of NHS, STP, MG, or FTA State planning and research funds (49 U.S.C. 5313(b)) or by deferment of lower priority planning activities);

(2) The planning activities have a higher priority than RD&T activities in the overall needs of the State DOT for a given fiscal year; and

(3) The total level of effort by the State DOT in RD&T (using both Federal and State funds) is adequate.

(c) If the State DOT chooses to pursue an exception, it must send the request, along with supporting justification, to the FHWA Division Administrator for action by the FHWA Associate Administrator for Research, Development, and Technology. The Associate Administrator's decision will be based upon the following considerations:

(1) Whether the State DOT has a process for identifying RD&T needs and for implementing a viable RD&T program.

(2) Whether the State DOT is contributing to cooperative RD&T programs or activities, such as the National Cooperative Highway Research Program, the Transportation Research Board, and transportation pooled fund studies.

(3) Whether the State DOT is using SPR funds for technology transfer and for transit or intermodal research and development to help meet the 25 percent minimum requirement.

(4) Whether the State DOT can demonstrate that it will meet the requirement or substantially increase its RD&T expenditures over a multi-year period, if an exception is granted for the fiscal year.

(5) Whether Federal funds needed for planning exceed the 75 percent limit for the fiscal year and whether any unused planning funds are available from previous fiscal years.

(d) If the FHWA Associate Administrator for Research, Development, and Technology approves the State DOT's request for an exception, the exception is valid only for that fiscal year's funds. A new request must be submitted and approved for subsequent fiscal year funds.

§ 420.109 What are the requirements for distribution of metropolitan planning funds?

(a) The State DOTs shall make all PL funds authorized by 23 U.S.C. 104(f) available to the MPOs in accordance with a formula developed by the State DOT, in consultation with the MPOs, and approved by the FHWA Division Administrator. The formula may allow for a portion of the PL funds to be used by the State DOT, or other agency agreed to by the State DOT and the MPOs, for activities that benefit all MPOs in the State, but State DOTs shall not use any PL funds for grant or subgrant administration. The formula may also provide for a portion of the funds to be made available for discretionary grants to MPOs to supplement their annual amount received under the distribution formula.

(b) In developing the formula for distributing PL funds, the State DOT shall consider population, status of planning, attainment of air quality standards, metropolitan area transportation needs, and other factors necessary to provide for an appropriate distribution of funds to carry out the requirements of 23 U.S.C. 134 and other applicable requirements of Federal law.

(c) The State DOTs shall inform the MPOs and the FHWA Division Office of the amounts allocated to each MPO as soon as possible after PL funds have been apportioned by the FHWA to the State DOTs.

(d) If the State DOT, in a State receiving the minimum apportionment of PL funds under the provisions of 23 U.S.C. 104(f)(2), determines that the share of funds to be allocated to any MPO results in the MPO receiving more funds than necessary to carry out the provisions of 23 U.S.C. 134, the State DOT may, after considering the views of the affected MPO(s) and with the approval of the FHWA Division Administrator, use those funds for transportation planning outside of metropolitan planning areas.

(e) In accordance with the provisions of 23 U.S.C. 134(n), any PL funds not needed for carrying out the metropolitan planning provisions of 23 U.S.C. 134 in any State may be made available by the MPO(s) to the State DOT for funding statewide planning activities under

23 U.S.C. 135, subject to approval by the FHWA Division Administrator.

(f) Any State PL fund distribution formula that does not meet the requirements of paragraphs (a) and (b) of this section shall be brought into conformance with those requirements before distribution on any new apportionment of PL funds.

§ 420.111 What are the documentation requirements for use of FHWA planning and research funds?

(a) Proposed use of FHWA planning and research funds must be documented by the State DOTs and subrecipients in a work program, or other document that describes the work to be accomplished, that is acceptable to the FHWA Division Administrator. Statewide, metropolitan, other transportation planning activities, and transportation RD&T activities may be documented in separate programs, paired in various combinations, or brought together as a single work program. The expenditure of PL funds for transportation planning outside of metropolitan planning areas under § 420.109(d) may be included in the work program for statewide transportation planning activities or in a separate work program submitted by the State DOT.

(b)(1) A work program(s) for transportation planning activities must include a description of work to be accomplished and cost estimates by activity or task. In addition, each work program must include a summary that shows:

- (i) Federal share by type of fund;
- (ii) Matching rate by type of fund;
- (iii) State and/or local matching share; and
- (iv) Other State or local funds.

(2) Additional information on metropolitan planning area work programs is contained in 23 CFR part 450. Additional information on RD&T work program content and format is contained in subpart B of this part.

(c) In areas not designated as TMAs, a simplified statement of work that describes who will perform the work and the work that will be accomplished using Federal funds may be used in lieu of a work program. If a simplified statement of work is used, it may be

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submitted separately or as part of the Statewide planning work program.

(d) The State DOTs that use separate Federal-aid projects in accordance with paragraph (a) of this section must submit an overall summary that identifies the amounts and sources of FHWA planning and research funds available, matching funds, and the amounts budgeted for each activity (e.g., statewide planning, RD&T, each metropolitan area, contributions to NCHRP and transportation pooled fund studies, etc.).

(e) The State DOTs and MPOs also are encouraged to include cost estimates for transportation planning, research, development, and technology transfer related activities funded with other Federal or State and/or local funds; particularly for producing the FHWA-required data specified in paragraph (b) of § 420.105, for planning for other transportation modes, and for air quality planning activities in areas designated as non-attainment for transportation-related pollutants in their work programs. The MPOs in TMAs must include such information in their work programs. (The information collection requirements in §§ 420.111 have been approved by the OMB and assigned control numbers 2125-0039 for States and 2132-0529 for MPOs.)

§ 420.113 What costs are eligible?

(a) Costs will be eligible for FHWA participation provided that the costs:

- (1) Are for work performed for activities eligible under the section of title 23, U.S.C., applicable to the class of funds used for the activities;
- (2) Are verifiable from the State DOT's or the subrecipient's records;
- (3) Are necessary and reasonable for proper and efficient accomplishment of project objectives and meet the other criteria for allowable costs in the applicable cost principles cited in 49 CFR 18.22;
- (4) Are included in the approved budget, or amendment thereto; and
- (5) Were not incurred prior to FHWA authorization.

(b) Indirect costs of State DOTs and their subrecipients are allowable if supported by a cost allocation plan and indirect cost proposal prepared, sub-

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mitted (if required), and approved by the cognizant or oversight agency in accordance with the OMB requirements applicable to the State DOT or subrecipient specified in 49 CFR 18.22(b).

§ 420.115 What are the FHWA approval and authorization requirements?

(a) The State DOT and its subrecipients must obtain approval and authorization to proceed prior to beginning work on activities to be undertaken with FHWA planning and research funds. Such approvals and authorizations should be based on final work programs or other documents that describe the work to be performed. The State DOT and its subrecipients also must obtain prior approval for budget and programmatic changes as specified in 49 CFR 18.30 or 49 CFR 19.25 and for those items of allowable costs which require approval in accordance with the cost principles specified in 49 CFR 18.22(b) applicable to the entity expending the funds.

(b) Authorization to proceed with the FHWA funded work in whole or in part is a contractual obligation of the Federal government pursuant to 23 U.S.C. 106 and requires that appropriate funds be available for the full Federal share of the cost of work authorized. Those State DOTs that do not have sufficient FHWA planning and research funds or obligation authority available to obligate the full Federal share of a work program or project may utilize the advance construction provisions of 23 U.S.C. 115(a) in accordance with the requirements of 23 CFR part 630, subpart G. The State DOTs that do not meet the advance construction provisions, or do not wish to utilize them, may request authorization to proceed with that portion of the work for which FHWA planning and research funds are available. In the latter case, authorization to proceed may be given for either selected work activities or for a portion of the program period, but such authorization does not constitute a commitment by the FHWA to fund the remaining portion of the work if additional funds do become available.

(c) A project agreement must be executed by the State DOT and the FHWA Division Office for each statewide transportation planning, metropolitan

planning area, or RD&T work program, individual activity or study, or any combination administered as a single Federal-aid project. The project agreement may be executed concurrent with or after authorization has been given by the FHWA Division Administrator to proceed with the work in whole or in part. In the event that the project agreement is executed for only part of the work, the project agreement must be amended when authorization is given to proceed with additional work.

(The information collection requirements in § 420.115(c) have been approved by the OMB and assigned control numbers 2125-0529)

§ 420.117 What are the program monitoring and reporting requirements?

(a) In accordance with 49 CFR 18.40, the State DOT shall monitor all activities performed by its staff or by subrecipients with FHWA planning and research funds to assure that the work is being managed and performed satisfactorily and that time schedules are being met.

(b)(1) The State DOT must submit performance and expenditure reports, including a report from each subrecipient, that contain as a minimum:

(i) Comparison of actual performance with established goals;

(ii) Progress in meeting schedules;

(iii) Status of expenditures in a format compatible with the work program, including a comparison of budgeted (approved) amounts and actual costs incurred;

(iv) Cost overruns or underruns;

(v) Approved work program revisions; and

(vi) Other pertinent supporting data.

(2) Additional information on reporting requirements for individual RD&T studies is contained in subpart B of this part.

(c) Reports required by paragraph (b) of this section shall be annual unless more frequent reporting is determined to be necessary by the FHWA Division Administrator. The FHWA may not require more frequent than quarterly reporting unless the criteria in 49 CFR 18.12 or 49 CFR 19.14 are met. Reports are due 90 days after the end of the reporting period for annual and final reports and no later than 30 days after

the end of the reporting period for other reports.

(d) Events that have significant impact on the work must be reported as soon as they become known. The types of events or conditions that require reporting include: problems, delays, or adverse conditions that will materially affect the ability to attain program objectives. This disclosure must be accompanied by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(e) Suitable reports that document the results of activities performed with FHWA planning and research funds must be prepared by the State DOT or subrecipient and submitted for approval by the FHWA Division Administrator prior to publication. The FHWA Division Administrator may waive this requirement for prior approval. The FHWA's approval of reports constitutes acceptance of such reports as evidence of work performed but does not imply endorsement of a report's findings or recommendations. Reports prepared for FHWA-funded work must include appropriate credit references and disclaimer statements. (The information collection requirements in § 420.117 have been approved by the OMB and assigned control numbers 2125-0039 for States and 2132-0529 for MPOs.)

§ 420.119 What are the fiscal requirements?

(a) The maximum rate of Federal participation for FHWA planning and research funds shall be as prescribed in title 23, U.S.C., for the specific class of funds used (*i.e.*, SPR, PL, NHS, STP, or MG) except as specified in paragraph (d) of this section. The provisions of 49 CFR 18.24 or 49 CFR 19.23 are applicable to any necessary matching of FHWA planning and research funds.

(b) The value of third party in-kind contributions may be accepted as the match for FHWA planning and research funds, in accordance with the provisions of 49 CFR 18.24(a)(2) or 49 CFR 19.23(a) and may be on either a total planning work program basis or for specific line items or projects. The use of third party in-kind contributions must be identified in the original work program/scope of work and the grant/

subgrant agreement, or amendments thereto. The use of third-party in-kind contributions must be approved in advance by the FHWA Division Administrator and may not be made retroactive prior to approval of the work program/scope of work or an amendment thereto. The State DOT or subrecipient is responsible for ensuring that the following additional criteria are met:

(1) The third party performing the work agrees to allow the value of the work to be used as the match;

(2) The cost of the third party work is not paid for by other Federal funds or used as a match for other federally funded grants/subgrants;

(3) The work performed by the third party is an eligible transportation planning or RD&T related activity that benefits the federally funded work;

(4) The third party costs (*i.e.*, salaries, fringe benefits, etc.) are allowable under the applicable Office of Management and Budget (OMB) cost principles (*i.e.*, OMB Circular A–21, A–87, or A–122);¹

(5) The third party work is performed during the period to which the matching requirement applies;

(6) The third party in-kind contributions are verifiable from the records of the State DOT or subrecipient and these records show how the value placed on third party in-kind contributions was derived; and

(7) If the total amount of third party expenditures at the end of the program period is not sufficient to match the total expenditure of Federal funds by the recipient/subrecipient, the recipient/subrecipient will need to make up any shortfall with its own funds.

(c) In accordance with the provisions of 23 U.S.C. 120(j), toll revenues that are generated and used by public, quasi-public, and private agencies to build, improve, or maintain highways, bridges, or tunnels that serve the public purpose of interstate commerce may be used as a credit for the non-Federal share of an FHWA planning and research funded project.

¹OMB Circulars are available on the Internet at <http://www.whitehouse.gov/omb/circulars/index.html>.

(d) In accordance with 23 U.S.C. 505(c) or 23 U.S.C. 104(f)(3), the requirement for matching SPR or PL funds may be waived if the FHWA determines the interests of the Federal-aid highway program would be best served. Waiver of the matching requirement is intended to encourage State DOTs and/or MPOs to pool SPR and/or PL funds to address national or regional high priority planning or RD&T problems that would benefit multiple States and/or MPOs. Requests for waiver of matching requirements must be submitted to the FHWA headquarters office for approval by the Associate Administrator for Planning and Environment (for planning activities) or the Associate Administrator for Research, Development, and Technology (for RD&T activities). The matching requirement may not be waived for NHS, STP, or MG funds.

(e) NHS, STP, or MG funds used for eligible planning and RD&T purposes must be identified separately from SPR or PL funds in the work program(s) and must be administered and accounted for separately for fiscal purposes. In accordance with the statewide and metropolitan planning process requirements for fiscally constrained transportation improvement program (TIPs) planning or RD&T activities funded with NHS, STP, or MG funds must be included in the Statewide and/or metropolitan TIP(s) unless the State DOT and MPO (for a metropolitan area) agree that they may be excluded from the TIP.

(f) Payment shall be made in accordance with the provisions of 49 CFR 18.21 or 49 CFR 19.22.

§ 420.121 What other requirements apply to the administration of FHWA planning and research funds?

(a) *Audits.* Audits of the State DOTs and their subrecipients shall be performed in accordance with OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations.² Audits of for-profit contractors are to be performed in accordance with State DOT or subrecipient contract administration procedures.

²See footnote 1.

(b) *Copyrights.* The State DOTs and their subrecipients may copyright any books, publications, or other copyrightable materials developed in the course of the FHWA planning and research funded project. The FHWA reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

(c) *Disadvantaged business enterprises.* The State DOTs must administer the transportation planning and RD&T program(s) consistent with their overall efforts to implement section 1001(b) of the Transportation Equity Act for the 21st Century (Pub. L. 105-178) and 49 CFR part 26 regarding disadvantaged business enterprises.

(d) *Drug free workplace.* In accordance with the provisions of 49 CFR part 29, subpart F, State DOTs must certify to the FHWA that they will provide a drug free workplace. This requirement may be satisfied through the annual certification for the Federal-aid highway program.

(e) *Equipment.* Acquisition, use, and disposition of equipment purchased with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.32(b). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.34.

(f) *Financial management systems.* The financial management systems of the State DOTs and their local government subrecipients must be in accordance with the provisions of 49 CFR 18.20(a). The financial management systems of universities, hospitals, and other non-profit organizations must be in accordance with 49 CFR 19.21.

(g) *Lobbying.* The provisions of 49 CFR part 20 regarding restrictions on influencing certain Federal activities are applicable to all tiers of recipients of FHWA planning and research funds.

(h) *Nondiscrimination.* The non-discrimination provisions of 23 CFR parts 200 and 230 and 49 CFR part 21, with respect to Title VI of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987, apply to all

programs and activities of recipients, subrecipients, and contractors receiving FHWA planning and research funds whether or not those programs or activities are federally funded.

(i) *Patents.* The State DOTs and their subrecipients are subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for § 401.14(g), in all subgrants or contracts. In addition, State DOTs and their subrecipients must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: "The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions."

(j) *Procurement.* Procedures for the procurement of property and services with FHWA planning and research funds by the State DOTs must be in accordance with 49 CFR 18.36(a) and (i) and, if applicable, 18.36(t). Local government subrecipients of State DOTs must follow the procedures specified by the State DOT. Universities, hospitals, and other non-profit organizations must follow the procedures in 49 CFR 19.40 through 19.48. The State DOTs and their subrecipients must not use FHWA funds for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended in accordance with the provisions of 49 CFR part 29, subparts A through E.

(k) *Program income.* Program income, as defined in 49 CFR 18.25(b) or 49 CFR 19.24, must be shown and deducted from total expenditures to determine the Federal share to be reimbursed, unless the FHWA Division Administrator has given prior approval to use the program income to perform additional eligible work or as the non-Federal match.

(l) *Record retention.* Recordkeeping and retention requirements must be in accordance with 49 CFR 18.42 or 49 CFR 19.53.

(m) *Subgrants to local governments.* The State DOTs and subrecipients are

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responsible for administering FHWA planning and research funds passed through to MPOs and local governments, for ensuring that such funds are expended for eligible activities, and for ensuring that the funds are administered in accordance with this part, 49 CFR part 18, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments, and applicable OMB cost principles. The State DOTs shall follow State laws and procedures when awarding and administering subgrants to MPOs and local governments and must ensure that the requirements of 49 CFR 18.37(a) have been satisfied.

(n) *Subgrants to universities, hospitals, and other non-profit organizations.* The State DOTs and subrecipients are responsible for ensuring that FHWA planning and research funds passed through to universities, hospitals, and other non-profit organizations are expended for eligible activities and for ensuring that the funds are administered in accordance with this part, 49 CFR part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and applicable OMB cost principles.

(o) *Suspension and debarment.* (1) The State DOTs and their subrecipients shall not award grants or cooperative agreements to entities who are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 of February 18, 1986 (3 CFR, 1986 Comp., p. 189); and

(2) The State DOTs and their subrecipients shall comply with the provisions of 49 CFR part 29, subparts A through E, for procurements from persons (as defined in 49 CFR 29.105) who have been debarred or suspended.

(p) *Supplies.* Acquisition and disposition of supplies acquired by the State DOTs and their subrecipients with FHWA planning and research funds must be in accordance with 49 CFR 18.33 or 49 CFR 19.35.

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Subpart B—Research, Development and Technology Transfer Program Management

§ 420.201 What is the purpose of this subpart?

The purpose of this subpart is to prescribe requirements for research, development, and technology transfer (RD&T) activities, programs, and studies undertaken by State DOTs and their subrecipients with FHWA planning and research funds.

§ 420.203 How does the FHWA define the terms used in this subpart?

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and subpart A of this part, are applicable to this subpart. As used in this subpart:

Applied research means the study of phenomena to gain knowledge or understanding necessary for determining the means by which a recognized need may be met; the primary purpose of this kind of research is to answer a question or solve a problem.

Basic research means the study of phenomena, and of observable facts, without specific applications towards processes or products in mind; the primary purpose of this kind of research is to increase knowledge.

Development means the systematic use of the knowledge or understanding gained from research, directed toward the production of useful materials, devices, systems or methods, including design and development of prototypes and processes.

Final report means a report documenting a completed RD&T study or activity.

Intermodal RD&T means research, development, and technology transfer activities involving more than one mode of transportation, including transfer facilities between modes.

Peer exchange means a periodic review of a State DOT's RD&T program, or portion thereof, by representatives of other State DOT's, for the purpose of exchange of information or best practices. The State DOT may also invite the participation of the FHWA, and other Federal, State, regional or local

transportation agencies, the Transportation Research Board, academic institutions, foundations or private firms that support transportation research, development or technology transfer activities.

RD&T activity means a basic or applied research project or study, development or technology transfer activity.

Research means a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. Research can be basic or applied.

Technology transfer means those activities that lead to the adoption of a new technique or product by users and involves dissemination, demonstration, training, and other activities that lead to eventual innovation.

Transportation Research Information Services (TRIS) means the database produced and maintained by the Transportation Research Board and available online through the National Transportation Library. TRIS includes bibliographic records and abstracts of ongoing and completed RD&T activities. TRIS Online also includes links to the full text of public-domain documents.

§ 420.205 What is the FHWA's policy for research, development, and technology transfer funding?

(a) It is the FHWA's policy to administer the RD&T program activities utilizing FHWA planning and research funds consistent with the policy specified in § 420.105 and the following general principles in paragraphs (b) through (g) of this section.

(b) The State DOTs must provide information necessary for peer exchanges.

(c) The State DOTs are encouraged to develop, establish, and implement an RD&T program, funded with Federal and State DOT resources that anticipates and addresses transportation concerns before they become critical problems. Further, the State DOTs are encouraged to include in this program development and technology transfer programs to share the results of their own research efforts and promote the use of new technology.

(d) To promote effective use of available resources, the State DOTs are en-

couraged to cooperate with other State DOTs, the FHWA, and other appropriate agencies to achieve RD&T objectives established at the national level and to develop a technology transfer program to promote and use those results. This includes contributing to cooperative RD&T programs such as the NCHRP, the TRB, and transportation pooled fund studies as a means of addressing national and regional issues and as a means of leveraging funds.

(e) The State DOTs will be allowed the authority and flexibility to manage and direct their RD&T activities as presented in their work programs, and to initiate RD&T activities supported by FHWA planning and research funds, subject to the limitation of Federal funds and to compliance with program conditions set forth in subpart A of this part and § 420.207.

(f) The State DOTs will have primary responsibility for managing RD&T activities supported with FHWA planning and research funds carried out by other State agencies and organizations and for ensuring that such funds are expended for purposes consistent with this subpart.

(g) Each State DOT must develop, establish, and implement a management process that ensures effective use of available FHWA planning and research funds for RD&T activities on a statewide basis. Each State DOT is permitted to tailor its management process to meet State or local needs; however, the process must comply with the minimum requirements and conditions of this subpart.

(h) The State DOTs are encouraged to make effective use of the FHWA Division, Resource Center, and Headquarters office expertise in developing and carrying out their RD&T activities. Participation of the FHWA on advisory panels and in program exchange meetings is encouraged.

§ 420.207 What are the requirements for research, development, and technology transfer work programs?

(a) The State DOT's RD&T work program must, as a minimum, consist of a description of RD&T activities to be accomplished during the program period, estimated costs for each eligible

activity, and a description of any cooperative activities including the State DOT's participation in any transportation pooled fund studies and the NCHRP. The State DOT's work program should include a list of the major items with a cost estimate for each item. The work program should also include any study funded under a previous work program until a final report has been completed for the study.

(b) The State DOT's RD&T work program must include financial summaries showing the funding levels and share (Federal, State, and other sources) for RD&T activities for the program year. State DOTs are encouraged to include any activity funded 100 percent with State or other funds for information purposes.

(c) Approval and authorization procedures in § 420.115 are applicable to the State DOT's RD&T work program.

§ 420.209 What are the conditions for approval?

(a) As a condition for approval of FHWA planning and research funds for RD&T activities, a State DOT must develop, establish, and implement a management process that identifies and results in implementation of RD&T activities expected to address high priority transportation issues. The management process must include:

(1) An interactive process for identification and prioritization of RD&T activities for inclusion in an RD&T work program;

(2) Use of all FHWA planning and research funds set aside for RD&T activities, either internally or for participation in transportation pooled fund studies or other cooperative RD&T programs, to the maximum extent possible;

(3) Procedures for tracking program activities, schedules, accomplishments, and fiscal commitments;

(4) Support and use of the TRIS database for program development, reporting of active RD&T activities, and input of the final report information;

(5) Procedures to determine the effectiveness of the State DOT's management process in implementing the RD&T program, to determine the utilization of the State DOT's RD&T outputs, and to facilitate peer exchanges

of its RD&T Program on a periodic basis;

(6) Procedures for documenting RD&T activities through the preparation of final reports. As a minimum, the documentation must include the data collected, analyses performed, conclusions, and recommendations. The State DOT must actively implement appropriate research findings and should document benefits; and

(7) Participation in peer exchanges of its RD&T management process and of other State DOTs' programs on a periodic basis. To assist peer exchange teams in conducting an effective exchange, the State DOT must provide to them the information and documentation required to be collected and maintained under this subpart. Travel and other costs associated with the State DOT's peer exchange may be identified as a line item in the State DOT's work program and will be eligible for 100 percent Federal funding. The peer exchange team must prepare a written report of the exchange.

(b) Documentation that describes the State DOT's management process and the procedures for selecting and implementing RD&T activities must be developed by the State DOT and submitted to the FHWA Division office for approval. Significant changes in the management process also must be submitted by the State DOT to the FHWA for approval. The State DOT must make the documentation available, as necessary, to facilitate peer exchanges.

(c) The State DOT must include a certification that it is in full compliance with the requirements of this subpart in each RD&T work program. If the State DOT is unable to certify full compliance, the FHWA Division Administrator may grant conditional approval of the State DOT's work program. A conditional approval must cite those areas of the State DOT's management process that are deficient and require that the deficiencies be corrected within 6 months of conditional approval. The certification must consist of a statement signed by the Administrator, or an official designated by the Administrator, of the State DOT certifying as follows: "I (name of certifying official), (position title), of the State (Commonwealth) of _____, do hereby

certify that the State (Commonwealth) is in compliance with all requirements of 23 U.S.C. 505 and its implementing regulations with respect to the research, development, and technology transfer program, and contemplate no changes in statutes, regulations, or administrative procedures which would affect such compliance.”

(d) The FHWA Division Administrator shall periodically review the State DOT's management process to determine if the State is in compliance with the requirements of this subpart. If the Division Administrator determines that a State DOT is not complying with the requirements of this subpart, or is not performing in accordance with its RD&T management process, the FHWA Division Administrator shall issue a written notice of proposed determination of noncompliance to the State DOT. The notice will set forth the reasons for the proposed determination and inform the State DOT that it may reply in writing within 30 calendar days from the date of the notice. The State DOT's reply should address the deficiencies cited in the notice and provide documentation as necessary. If the State DOT and the Division Administrator cannot resolve the differences set forth in the determination of nonconformity, the State DOT may appeal to the Federal Highway Administrator whose action shall constitute the final decision of the FHWA. An adverse decision shall result in immediate withdrawal of approval of FHWA planning and research funds for the State DOT's RD&T activities until the State DOT is in full compliance.

(The information collection requirements in § 420.209 have been approved by the OMB and assigned control number 2125-0039)

PART 450—PLANNING ASSISTANCE AND STANDARDS

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APPENDIX A TO PART 450—LINKING THE TRANSPORTATION PLANNING AND NEPA PROCESSES.

§ 450.100

AUTHORITY: 23 U.S.C. 134 and 135; 42 U.S.C. 7410 *et seq.*; 49 U.S.C. 5303 and 5304; 49 CFR 1.48 and 1.51.

SOURCE: 72 FR 7261, Feb. 14, 2007, unless otherwise noted.

Subpart A—Transportation Planning and Programming Definitions

§ 450.100 Purpose.

The purpose of this subpart is to provide definitions for terms used in this part.

§ 450.102 Applicability.

The definitions in this subpart are applicable to this part, except as otherwise provided.

§ 450.104 Definitions.

Unless otherwise specified, the definitions in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are applicable to this part.

Administrative modification means a minor revision to a long-range statewide or metropolitan transportation plan, Transportation Improvement Program (TIP), or Statewide Transportation Improvement Program (STIP) that includes minor changes to project/project phase costs, minor changes to funding sources of previously-included projects, and minor changes to project/project phase initiation dates. An administrative modification is a revision that does not require public review and comment, redemonstration of fiscal constraint, or a conformity determination (in nonattainment and maintenance areas).

Alternatives analysis (AA) means a study required for eligibility of funding under the Federal Transit Administration's (FTA's) Capital Investment Grant program (49 U.S.C. 5309), which includes an assessment of a range of alternatives designed to address a transportation problem in a corridor or sub-area, resulting in sufficient information to support selection by State and local officials of a locally preferred alternative for adoption into a metropolitan transportation plan, and for the Secretary to make decisions to advance the locally preferred alternative through the project development process, as set forth in 49 CFR part 611 (Major Capital Investment Projects).

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Amendment means a revision to a long-range statewide or metropolitan transportation plan, TIP, or STIP that involves a major change to a project included in a metropolitan transportation plan, TIP, or STIP, including the addition or deletion of a project or a major change in project cost, project/project phase initiation dates, or a major change in design concept or design scope (e.g., changing project termini or the number of through traffic lanes). Changes to projects that are included only for illustrative purposes do not require an amendment. An amendment is a revision that requires public review and comment, redemonstration of fiscal constraint, or a conformity determination (for metropolitan transportation plans and TIPs involving “non-exempt” projects in nonattainment and maintenance areas). In the context of a long-range statewide transportation plan, an amendment is a revision approved by the State in accordance with its public involvement process.

Attainment area means any geographic area in which levels of a given criteria air pollutant (e.g., ozone, carbon monoxide, PM₁₀, PM_{2.5}, and nitrogen dioxide) meet the health-based National Ambient Air Quality Standards (NAAQS) for that pollutant. An area may be an attainment area for one pollutant and a nonattainment area for others. A “maintenance area” (see definition below) is not considered an attainment area for transportation planning purposes.

Available funds means funds derived from an existing source dedicated to or historically used for transportation purposes. For Federal funds, authorized and/or appropriated funds and the extrapolation of formula and discretionary funds at historic rates of increase are considered “available.” A similar approach may be used for State and local funds that are dedicated to or historically used for transportation purposes.

Committed funds means funds that have been dedicated or obligated for transportation purposes. For State funds that are not dedicated to transportation purposes, only those funds over which the Governor has control

may be considered “committed.” Approval of a TIP by the Governor is considered a commitment of those funds over which the Governor has control. For local or private sources of funds not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing (e.g., letter of intent) by the responsible official or body having control of the funds may be considered a commitment. For projects involving 49 U.S.C. 5309 funding, execution of a Full Funding Grant Agreement (or equivalent) or a Project Construction Grant Agreement with the USDOT shall be considered a multi-year commitment of Federal funds.

Conformity means a Clean Air Act (42 U.S.C. 7506(c)) requirement that ensures that Federal funding and approval are given to transportation plans, programs and projects that are consistent with the air quality goals established by a State Implementation Plan (SIP). Conformity, to the purpose of the SIP, means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. The transportation conformity rule (40 CFR part 93) sets forth policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities.

Conformity lapse means, pursuant to section 176(c) of the Clean Air Act (42 U.S.C. 7506(c)), as amended, that the conformity determination for a metropolitan transportation plan or TIP has expired and thus there is no currently conforming metropolitan transportation plan or TIP.

Congestion management process means a systematic approach required in transportation management areas (TMAs) that provides for effective management and operation, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C., and title 49 U.S.C., through the use of operational management strategies.

Consideration means that one or more parties takes into account the opinions, action, and relevant information

from other parties in making a decision or determining a course of action.

Consultation means that one or more parties confer with other identified parties in accordance with an established process and, prior to taking action(s), considers the views of the other parties and periodically informs them about action(s) taken. This definition does not apply to the “consultation” performed by the States and the MPOs in comparing the long-range statewide transportation plan and the metropolitan transportation plan, respectively, to State and Tribal conservation plans or maps or inventories of natural or historic resources (see § 450.214(i) and § 450.322(g)(1) and (g)(2)).

Cooperation means that the parties involved in carrying out the transportation planning and programming processes work together to achieve a common goal or objective.

Coordinated public transit-human services transportation plan means a locally developed, coordinated transportation plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes, provides strategies for meeting those local needs, and prioritizes transportation services for funding and implementation.

Coordination means the cooperative development of plans, programs, and schedules among agencies and entities with legal standing and adjustment of such plans, programs, and schedules to achieve general consistency, as appropriate.

Design concept means the type of facility identified for a transportation improvement project (e.g., freeway, expressway, arterial highway, grade-separated highway, toll road, reserved right-of-way rail transit, mixed-traffic rail transit, or busway).

Design scope means the aspects that will affect the proposed facility’s impact on the region, usually as they relate to vehicle or person carrying capacity and control (e.g., number of lanes or tracks to be constructed or added, length of project, signalization, safety features, access control including approximate number and location of interchanges, or preferential treatment for high-occupancy vehicles).

Designated recipient means an entity designated, in accordance with the planning process under 49 U.S.C. 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly-owned operators of public transportation, to receive and apportion amounts under 49 U.S.C. 5336 that are attributable to transportation management areas (TMAs) identified under 49 U.S.C. 5303, or a State regional authority if the authority is responsible under the laws of a State for a capital project and for financing and directly providing public transportation.

Environmental mitigation activities means strategies, policies, programs, actions, and activities that, over time, will serve to avoid, minimize, or compensate for (by replacing or providing substitute resources) the impacts to or disruption of elements of the human and natural environment associated with the implementation of a long-range statewide transportation plan or metropolitan transportation plan. The human and natural environment includes, for example, neighborhoods and communities, homes and businesses, cultural resources, parks and recreation areas, wetlands and water sources, forested and other natural areas, agricultural areas, endangered and threatened species, and the ambient air. The environmental mitigation strategies and activities are intended to be regional in scope, and may not necessarily address potential project-level impacts.

Federal land management agency means units of the Federal Government currently responsible for the administration of public lands (e.g., U.S. Forest Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and the National Park Service).

Federally funded non-emergency transportation services means transportation services provided to the general public, including those with special transport needs, by public transit, private non-profit service providers, and private third-party contractors to public agencies.

Financial plan means documentation required to be included with a metropolitan transportation plan and TIP (and optional for the long-range state-

wide transportation plan and STIP) that demonstrates the consistency between reasonably available and projected sources of Federal, State, local, and private revenues and the costs of implementing proposed transportation system improvements.

Financially constrained or Fiscal constraint means that the metropolitan transportation plan, TIP, and STIP includes sufficient financial information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are “available” or “committed.”

Freight shippers means any business that routinely transports its products from one location to another by providers of freight transportation services or by its own vehicle fleet.

Full funding grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding New Starts projects as required by 49 U.S.C. 5309(d)(1).

Governor means the Governor of any of the 50 States or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia.

Illustrative project means an additional transportation project that may (but is not required to) be included in a financial plan for a metropolitan transportation plan, TIP, or STIP if reasonable additional resources were to become available.

Indian Tribal government means a duly formed governing body for an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, Public Law 103–454.

Intelligent transportation system (ITS) means electronics, photonics, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system.

Interim metropolitan transportation plan means a transportation plan composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO.

Interim transportation improvement program (TIP) means a TIP composed of projects eligible to proceed under a conformity lapse and otherwise meeting all other applicable provisions of this part, including approval by the MPO and the Governor.

Long-range statewide transportation plan means the official, statewide, multimodal, transportation plan covering a period of no less than 20 years developed through the statewide transportation planning process.

Maintenance area means any geographic region of the United States that the EPA previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under section 175A of the Clean Air Act, as amended.

Management system means a systematic process, designed to assist decisionmakers in selecting cost effective strategies/actions to improve the efficiency or safety of, and protect the investment in the nation's infrastructure. A management system can include: Identification of performance measures; data collection and analysis; determination of needs; evaluation and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area (MPA) means the geographic area determined by agreement between the metropolitan planning organization (MPO) for the area and the Governor, in which the metropolitan transportation planning process is carried out.

Metropolitan planning organization (MPO) means the policy board of an or-

ganization created and designated to carry out the metropolitan transportation planning process.

Metropolitan transportation plan means the official multimodal transportation plan addressing no less than a 20-year planning horizon that is developed, adopted, and updated by the MPO through the metropolitan transportation planning process.

National ambient air quality standard (NAAQS) means those standards established pursuant to section 109 of the Clean Air Act.

Nonattainment area means any geographic region of the United States that has been designated by the EPA as a nonattainment area under section 107 of the Clean Air Act for any pollutants for which an NAAQS exists.

Non-metropolitan area means a geographic area outside a designated metropolitan planning area.

Non-metropolitan local officials means elected and appointed officials of general purpose local government in a non-metropolitan area with responsibility for transportation.

Obligated projects means strategies and projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 for which the supporting Federal funds were authorized and committed by the State or designated recipient in the preceding program year, and authorized by the FHWA or awarded as a grant by the FTA.

Operational and management strategies means actions and strategies aimed at improving the performance of existing and planned transportation facilities to relieve congestion and maximizing the safety and mobility of people and goods.

Project construction grant agreement means an instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).

Project selection means the procedures followed by MPOs, States, and public transportation operators to advance projects from the first four years of an approved TIP and/or STIP to implementation, in accordance with agreed upon procedures.

Provider of freight transportation services means any entity that transports or otherwise facilitates the movement of goods from one location to another for others or for itself.

Public transportation operator means the public entity which participates in the continuing, cooperative, and comprehensive transportation planning process in accordance with 23 U.S.C. 134 and 135 and 49 U.S.C. 5303 and 5304, and is the designated recipient of Federal funds under title 49 U.S.C. Chapter 53 for transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by Amtrak.

Regional ITS architecture means a regional framework for ensuring institutional agreement and technical integration for the implementation of ITS projects or groups of projects.

Regionally significant project means a transportation project (other than projects that may be grouped in the TIP and/or STIP or exempt projects as defined in EPA's transportation conformity regulation (40 CFR part 93)) that is on a facility which serves regional transportation needs (such as access to and from the area outside the region; major activity centers in the region; major planned developments such as new retail malls, sports complexes, or employment centers; or transportation terminals) and would normally be included in the modeling of the metropolitan area's transportation network. At a minimum, this includes all principal arterial highways and all fixed guideway transit facilities that offer a significant alternative to regional highway travel.

Revision means a change to a long-range statewide or metropolitan transportation plan, TIP, or STIP that occurs between scheduled periodic updates. A major revision is an "amendment," while a minor revision is an "administrative modification."

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

State implementation plan (SIP) means, as defined in section 302(q) of the Clean Air Act (CAA), the portion (or por-

tions) of the implementation plan, or most recent revision thereof, which has been approved under section 110 of the CAA, or promulgated under section 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under section 301(d) of the CAA and which implements the relevant requirements of the CAA.

Statewide transportation improvement program (STIP) means a statewide prioritized listing/program of transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Strategic highway safety plan means a plan developed by the State DOT in accordance with the requirements of 23 U.S.C. 148(a)(6).

Transportation control measure (TCM) means any measure that is specifically identified and committed to in the applicable SIP that is either one of the types listed in section 108 of the Clean Air Act or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures that control the emissions from vehicles under fixed traffic conditions are not TCMs.

Transportation improvement program (TIP) means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53.

Transportation management area (TMA) means an urbanized area with a population over 200,000, as defined by the Bureau of the Census and designated by the Secretary of Transportation, or any additional area where TMA designation is requested by the

Governor and the MPO and designated by the Secretary of Transportation.

Unified planning work program (UPWP) means a statement of work identifying the planning priorities and activities to be carried out within a metropolitan planning area. At a minimum, a UPWP includes a description of the planning work and resulting products, who will perform the work, time frames for completing the work, the cost of the work, and the source(s) of funds.

Update means making current a long-range statewide transportation plan, metropolitan transportation plan, TIP, or STIP through a comprehensive review. Updates require public review and comment, a 20-year horizon year for metropolitan transportation plans and long-range statewide transportation plans, a four-year program period for TIPs and STIPs, demonstration of fiscal constraint (except for long-range statewide transportation plans), and a conformity determination (for metropolitan transportation plans and TIPs in nonattainment and maintenance areas).

Urbanized area means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.

Users of public transportation means any person, or groups representing such persons, who use transportation open to the general public, other than taxis and other privately funded and operated vehicles.

Visualization techniques means methods used by States and MPOs in the development of transportation plans and programs with the public, elected and appointed officials, and other stakeholders in a clear and easily accessible format such as maps, pictures, and/or displays, to promote improved understanding of existing or proposed transportation plans and programs.

Subpart B—Statewide Transportation Planning and Programming

§ 450.200 Purpose.

The purpose of this subpart is to implement the provisions of 23 U.S.C. 135 and 49 U.S.C. 5304, as amended, which require each State to carry out a con-

tinuing, cooperative, and comprehensive statewide multimodal transportation planning process, including the development of a long-range statewide transportation plan and statewide transportation improvement program (STIP), that facilitates the safe and efficient management, operation, and development of surface transportation systems that will serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and that fosters economic growth and development within and between States and urbanized areas, while minimizing transportation-related fuel consumption and air pollution in all areas of the State, including those areas subject to the metropolitan transportation planning requirements of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.202 Applicability.

The provisions of this subpart are applicable to States and any other organizations or entities (e.g., metropolitan planning organizations (MPOs) and public transportation operators) that are responsible for satisfying the requirements for transportation plans and programs throughout the State pursuant to 23 U.S.C. 135 and 49 U.S.C. 5304.

§ 450.204 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.206 Scope of the statewide transportation planning process.

(a) Each State shall carry out a continuing, cooperative, and comprehensive statewide transportation planning process that provides for consideration and implementation of projects, strategies, and services that will address the following factors:

(1) Support the economic vitality of the United States, the States, metropolitan areas, and non-metropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

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(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes throughout the State, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the statewide transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation systems development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5 U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a long-range statewide transportation plan, STIP, project or strategy, or the statewide transportation planning process findings.

(d) Funds provided under 23 U.S.C. 505 and 49 U.S.C. 5305(e) are available to the State to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (3) and 105 and 49 U.S.C. 5307 may also be used. Statewide transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 shall be documented in a statewide planning work program in accordance with the provisions of 23 CFR part 420. The work program should include a discussion of the

transportation planning priorities facing the State.

§ 450.208 Coordination of planning process activities.

(a) In carrying out the statewide transportation planning process, each State shall, at a minimum:

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. The State is encouraged to rely on information, studies, or analyses provided by MPOs for portions of the transportation system located in metropolitan planning areas;

(2) Coordinate planning carried out under this subpart with statewide trade and economic development planning activities and related multistate planning efforts;

(3) Consider the concerns of Federal land management agencies that have jurisdiction over land within the boundaries of the State;

(4) Consider the concerns of local elected and appointed officials with responsibilities for transportation in non-metropolitan areas;

(5) Consider the concerns of Indian Tribal governments that have jurisdiction over land within the boundaries of the State;

(6) Consider related planning activities being conducted outside of metropolitan planning areas and between States; and

(7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

(b) The State air quality agency shall coordinate with the State department of transportation (State DOT) to develop the transportation portion of the State Implementation Plan (SIP) consistent with the Clean Air Act (42 U.S.C. 7401 *et seq.*).

(c) Two or more States may enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities under this subpart related to interstate areas and localities in the States and establishing authorities the States

consider desirable for making the agreements and compacts effective. The right to alter, amend, or repeal interstate compacts entered into under this part is expressly reserved.

(d) States may use any one or more of the management systems (in whole or in part) described in 23 CFR part 500.

(e) States may apply asset management principles and techniques in establishing planning goals, defining STIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance.

(f) The statewide transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the statewide transportation planning process.

(h) The statewide transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

§ 450.210 Interested parties, public involvement, and consultation.

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.

(1) The State's public involvement process at a minimum shall:

(i) Establish early and continuous public involvement opportunities that provide timely information about transportation issues and decision-making processes to citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of

users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties;

(ii) Provide reasonable public access to technical and policy information used in the development of the long-range statewide transportation plan and the STIP;

(iii) Provide adequate public notice of public involvement activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP;

(iv) To the maximum extent practicable, ensure that public meetings are held at convenient and accessible locations and times;

(v) To the maximum extent practicable, use visualization techniques to describe the proposed long-range statewide transportation plan and supporting studies;

(vi) To the maximum extent practicable, make public information available in electronically accessible format and means, such as the World Wide Web, as appropriate to afford reasonable opportunity for consideration of public information;

(vii) Demonstrate explicit consideration and response to public input during the development of the long-range statewide transportation plan and STIP;

(viii) Include a process for seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services; and

(ix) Provide for the periodic review of the effectiveness of the public involvement process to ensure that the process provides full and open access to all interested parties and revise the process, as appropriate.

(2) The State shall provide for public comment on existing and proposed processes for public involvement in the development of the long-range statewide transportation plan and the STIP. At a minimum, the State shall allow 45 calendar days for public review and

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written comment before the procedures and any major revisions to existing procedures are adopted. The State shall provide copies of the approved public involvement process document(s) to the FHWA and the FTA for informational purposes.

(b) The State shall provide for non-metropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this consultation process(es), copies of the process document(s) shall be provided to the FHWA and the FTA for informational purposes.

(1) At least once every five years (as of February 24, 2006), the State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 calendar days regarding the effectiveness of the consultation process and any proposed changes. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials.

(2) The State, at its discretion, shall be responsible for determining whether to adopt any proposed changes. If a proposed change is not adopted, the State shall make publicly available its reasons for not accepting the proposed change, including notification to non-metropolitan local officials or their associations.

(c) For each area of the State under the jurisdiction of an Indian Tribal government, the State shall develop the long-range statewide transportation plan and STIP in consultation with the Tribal government and the Secretary of Interior. States shall, to the extent practicable, develop a documented process(es) that outlines roles,

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responsibilities, and key decision points for consulting with Indian Tribal governments and Federal land management agencies in the development of the long-range statewide transportation plan and the STIP.

§ 450.212 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA-21 (Pub. L. 105-178), a State(s), MPO(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the statewide transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the State(s), MPO(s), and/or public transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500-1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

(1) Purpose and need or goals and objective statement(s);

(2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);

(3) Preliminary screening of alternatives and elimination of unreasonable alternatives;

(4) Basic description of the environmental setting; and/or

(5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

(1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and

(2) The systems-level, corridor, or subarea planning study is conducted with:

(i) Involvement of interested State, local, Tribal, and Federal agencies;

(ii) Public review;

(iii) Reasonable opportunity to comment during the statewide transportation planning process and development of the corridor or subarea planning study;

(iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate. Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that is non-binding guidance material.

§ 450.214 Development and content of the long-range statewide transportation plan.

(a) The State shall develop a long-range statewide transportation plan, with a minimum 20-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State. The long-range statewide transportation plan shall consider and include, as applicable, elements and connections between public transportation, non-motorized modes, rail, commercial motor vehicle,

waterway, and aviation facilities, particularly with respect to intercity travel.

(b) The long-range statewide transportation plan should include capital, operations and management strategies, investments, procedures, and other measures to ensure the preservation and most efficient use of the existing transportation system. The long-range statewide transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the State's transportation system.

(c) The long-range statewide transportation plan shall reference, summarize, or contain any applicable short-range planning studies; strategic planning and/or policy studies; transportation needs studies; management systems reports; emergency relief and disaster preparedness plans; and any statements of policies, goals, and objectives on issues (e.g., transportation, safety, economic development, social and environmental effects, or energy) that were relevant to the development of the long-range statewide transportation plan.

(d) The long-range statewide transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects contained in the Strategic Highway Safety Plan required by 23 U.S.C. 148.

(e) The long-range statewide transportation plan should include a security element that incorporates or summarizes the priorities, goals, or projects set forth in other transit safety and security planning and review processes, plans, and programs, as appropriate.

(f) Within each metropolitan area of the State, the long-range statewide transportation plan shall be developed in cooperation with the affected MPOs.

(g) For non-metropolitan areas, the long-range statewide transportation plan shall be developed in consultation with affected non-metropolitan officials with responsibility for transportation using the State's consultation process(es) established under § 450.210(b).

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(h) For each area of the State under the jurisdiction of an Indian Tribal government, the long-range statewide transportation plan shall be developed in consultation with the Tribal government and the Secretary of the Interior consistent with § 450.210(c).

(i) The long-range statewide transportation plan shall be developed, as appropriate, in consultation with State, Tribal, and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation. This consultation shall involve comparison of transportation plans to State and Tribal conservation plans or maps, if available, and comparison of transportation plans to inventories of natural or historic resources, if available.

(j) A long-range statewide transportation plan shall include a discussion of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the long-range statewide transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The State may establish reasonable timeframes for performing this consultation.

(k) In developing and updating the long-range statewide transportation plan, the State shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall, to the maximum extent practicable, utilize the public involve-

ment process described under § 450.210(a).

(l) The long-range statewide transportation plan may (but is not required to) include a financial plan that demonstrates how the adopted long-range statewide transportation plan can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the plan, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted long-range statewide transportation plan if additional resources beyond those identified in the financial plan were to become available.

(m) The State shall not be required to select any project from the illustrative list of additional projects included in the financial plan described in paragraph (l) of this section.

(n) The long-range statewide transportation plan shall be published or otherwise made available, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.210(a).

(o) The State shall continually evaluate, revise, and periodically update the long-range statewide transportation plan, as appropriate, using the procedures in this section for development and establishment of the long-range statewide transportation plan.

(p) Copies of any new or amended long-range statewide transportation plan documents shall be provided to the FHWA and the FTA for informational purposes.

§ 450.216 Development and content of the statewide transportation improvement program (STIP).

(a) The State shall develop a statewide transportation improvement program (STIP) for all areas of the State. The STIP shall cover a period of no less than four years and be updated at least every four years, or more frequently if the Governor elects a more frequent update cycle. However, if the STIP covers more than four years, the FHWA and the FTA will consider the projects

in the additional years as informational. In case of difficulties developing a portion of the STIP for a particular area (e.g., metropolitan planning area, nonattainment or maintenance area, or Indian Tribal lands), a partial STIP covering the rest of the State may be developed.

(b) For each metropolitan area in the State, the STIP shall be developed in cooperation with the MPO designated for the metropolitan area. Each metropolitan transportation improvement program (TIP) shall be included without change in the STIP, directly or by reference, after approval of the TIP by the MPO and the Governor. A metropolitan TIP in a nonattainment or maintenance area is subject to a FHWA/FTA conformity finding before inclusion in the STIP. In areas outside a metropolitan planning area but within an air quality nonattainment or maintenance area containing any part of a metropolitan area, projects must be included in the regional emissions analysis that supported the conformity determination of the associated metropolitan TIP before they are added to the STIP.

(c) For each non-metropolitan area in the State, the STIP shall be developed in consultation with affected non-metropolitan local officials with responsibility for transportation using the State's consultation process(es) established under § 450.210.

(d) For each area of the State under the jurisdiction of an Indian Tribal government, the STIP shall be developed in consultation with the Tribal government and the Secretary of the Interior.

(e) Federal Lands Highway program TIPs shall be included without change in the STIP, directly or by reference, once approved by the FHWA pursuant to 23 U.S.C. 204(a) or (j).

(f) The Governor shall provide all interested parties with a reasonable opportunity to comment on the proposed STIP as required by § 450.210(a).

(g) The STIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State proposed for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 (including transportation enhancements; Federal

Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the State's discretion, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(h) The STIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded with 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 funds (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds, and congressionally designated projects not funded under title 23 U.S.C. or title 49 U.S.C. Chapter 53). For informational and conformity purposes, the STIP shall include (if appropriate and included in any TIPs) all regionally significant projects proposed to be funded with Federal funds other than those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(i) The STIP shall include for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction) the following:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, or a project cost range, which may extend beyond the four years of the STIP;

(3) The amount of Federal funds proposed to be obligated during each program year (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds); and

(4) Identification of the agencies responsible for carrying out the project or phase.

(j) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the “exempt project” classifications contained in the EPA’s transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not regionally significant may be grouped in one line item or identified individually in the STIP.

(k) Each project or project phase included in the STIP shall be consistent with the long-range statewide transportation plan developed under § 450.214 and, in metropolitan planning areas, consistent with an approved metropolitan transportation plan developed under § 450.322.

(l) The STIP may include a financial plan that demonstrates how the approved STIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the STIP, and recommends any additional financing strategies for needed projects and programs. In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted STIP if reasonable additional resources beyond those identified in the financial plan were to become available. The State is not required to select any project from the illustrative list for implementation, and projects on the illustrative list cannot be advanced to implementation without an action by the FHWA and the

FTA on the STIP. Starting December 11, 2007, revenue and cost estimates for the STIP must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and information, developed cooperatively by the State, MPOs, and public transportation operators.

(m) The STIP shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the STIP shall be limited to those for which funds are available or committed. Financial constraint of the STIP shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally-supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (l) of this section. For purposes of transportation operations and maintenance, the STIP shall include financial information containing system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(n) Projects in any of the first four years of the STIP may be advanced in place of another project in the first four years of the STIP, subject to the project selection requirements of § 450.220. In addition, the STIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the STIP development procedures established in this section, as well as the procedures for participation by interested parties (see § 450.210(a)), subject to FHWA/FTA approval (see § 450.218). Changes that affect fiscal constraint must take place by amendment of the STIP.

(o) In cases that the FHWA and the FTA find a STIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the FTA will not act on an updated or amended STIP that does not reflect the changed revenue situation.

§ 450.218 Self-certifications, Federal findings, and Federal approvals.

(a) At least every four years, the State shall submit an updated STIP concurrently to the FHWA and the FTA for joint approval. STIP amendments shall also be submitted to the FHWA and the FTA for joint approval. At the time the entire proposed STIP or STIP amendments are submitted to the FHWA and the FTA for joint approval, the State shall certify that the transportation planning process is being carried out in accordance with all applicable requirements of:

(1) 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and this part;

(2) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-1) and 49 CFR part 21;

(3) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(4) Section 1101(b) of the SAFETEA-LU (Pub. L. 109-59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(5) 23 CFR part 230, regarding implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(6) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(7) In States containing nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in

programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C., regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) The FHWA and the FTA shall review the STIP or the amended STIP, and make a joint finding on the extent to which the STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 134 and 135, 49 U.S.C. 5303 and 5304, and subparts A, B, and C of this part. Approval of the STIP by the FHWA and the FTA, in its entirety or in part, will be based upon the results of this joint finding.

(1) If the FHWA and the FTA determine that the STIP or amended STIP is based on a statewide transportation planning process that meets or substantially meets the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part, the FHWA and the FTA may jointly:

(i) Approve the entire STIP;

(ii) Approve the STIP subject to certain corrective actions being taken; or

(iii) Under special circumstances, approve a partial STIP covering only a portion of the State.

(2) If the FHWA and the FTA jointly determine and document in the planning finding that a submitted STIP or amended STIP does not substantially meet the requirements of 23 U.S.C. 135, 49 U.S.C. 5304, and this part for any identified categories of projects, the FHWA and the FTA will not approve the STIP.

(c) The approval period for a new or amended STIP shall not exceed four years. If a State demonstrates, in writing, that extenuating circumstances will delay the submittal of a new or amended STIP past its update deadline, the FHWA and the FTA will consider and take appropriate action on a request to extend the approval beyond four years for all or part of the STIP for a period not to exceed 180 calendar days. In these cases, priority consideration will be given to projects and strategies involving the operation and management of the multimodal transportation system. Where the request

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involves projects in a metropolitan planning area(s), the affected MPO(s) must concur in the request. If the delay was due to the development and approval of a metropolitan TIP(s), the affected MPO(s) must provide supporting information, in writing, for the request.

(d) Where necessary in order to maintain or establish highway and transit operations, the FHWA and the FTA may approve operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved STIP.

§ 450.220 Project selection from the STIP.

(a) Except as provided in § 450.216(g) and § 450.218(d), only projects in a FHWA/FTA approved STIP shall be eligible for funds administered by the FHWA or the FTA.

(b) In metropolitan planning areas, transportation projects proposed for funds administered by the FHWA or the FTA shall be selected from the approved STIP in accordance with project selection procedures provided in § 450.330.

(c) In non-metropolitan areas, transportation projects undertaken on the National Highway System, under the Bridge and Interstate Maintenance programs in title 23 U.S.C. and under sections 5310, 5311, 5316, and 5317 of title 49 U.S.C. Chapter 53 shall be selected from the approved STIP by the State in consultation with the affected non-metropolitan local officials with responsibility for transportation.

(d) Federal Lands Highway program projects shall be selected from the approved STIP in accordance with the procedures developed pursuant to 23 U.S.C. 204.

(e) The projects in the first year of an approved STIP shall constitute an "agreed to" list of projects for subsequent scheduling and implementation. No further action under paragraphs (b) through (d) of this section is required for the implementing agency to proceed with these projects. If Federal funds available are significantly less than the authorized amounts, or where there is significant shifting of projects among years, § 450.330(a) provides for a revised list of "agreed to" projects to

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be developed upon the request of the State, MPO, or public transportation operator(s). If an implementing agency wishes to proceed with a project in the second, third, or fourth year of the STIP, the procedures in paragraphs (b) through (d) of this section or expedited procedures that provide for the advancement of projects from the second, third, or fourth years of the STIP may be used, if agreed to by all parties involved in the selection process.

§ 450.222 Applicability of NEPA to statewide transportation plans and programs.

Any decision by the Secretary concerning a long-range statewide transportation plan or STIP developed through the processes provided for in 23 U.S.C. 135, 49 U.S.C. 5304, and this subpart shall not be considered to be a Federal action subject to review under NEPA.

§ 450.224 Phase-in of new requirements.

(a) Long-range statewide transportation plans and STIPs adopted or approved prior to July 1, 2007 may be developed using the TEA-21 requirements or the provisions and requirements of this part.

(b) For STIPs that are developed under TEA-21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, STIP approval) must be completed no later than June 30, 2007. For long-range statewide transportation plans that are completed under TEA-21 requirements prior to July 1, 2007, the State adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the long-range statewide transportation plan or the STIP were developed.

(c) The applicable action (see paragraph (b) of this section) on any amendments or updates to STIPs or long-range statewide transportation plans on or after July 1, 2007, shall be based on the provisions and requirements of this part. However, administrative modifications may be made to the STIP on or after July 1, 2007 in the

absence of meeting the provisions and requirements of this part.

Subpart C—Metropolitan Transportation Planning and Programming

§ 450.300 Purpose.

The purposes of this subpart are to implement the provisions of 23 U.S.C. 134 and 49 U.S.C. 5303, as amended, which:

(a) Sets forth the national policy that the MPO designated for each urbanized area is to carry out a continuing, cooperative, and comprehensive multimodal transportation planning process, including the development of a metropolitan transportation plan and a transportation improvement program (TIP), that encourages and promotes the safe and efficient development, management, and operation of surface transportation systems to serve the mobility needs of people and freight (including accessible pedestrian walkways and bicycle transportation facilities) and foster economic growth and development, while minimizing transportation-related fuel consumption and air pollution; and

(b) Encourages continued development and improvement of metropolitan transportation planning processes guided by the planning factors set forth in 23 U.S.C. 134(h) and 49 U.S.C. 5303(h).

§ 450.302 Applicability.

The provisions of this subpart are applicable to organizations and entities responsible for the transportation planning and programming processes in metropolitan planning areas.

§ 450.304 Definitions.

Except as otherwise provided in subpart A of this part, terms defined in 23 U.S.C. 101(a) and 49 U.S.C. 5302 are used in this subpart as so defined.

§ 450.306 Scope of the metropolitan transportation planning process.

(a) The metropolitan transportation planning process shall be continuous, cooperative, and comprehensive, and provide for consideration and implementation of projects, strategies, and

services that will address the following factors:

(1) Support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency;

(2) Increase the safety of the transportation system for motorized and non-motorized users;

(3) Increase the security of the transportation system for motorized and non-motorized users;

(4) Increase accessibility and mobility of people and freight;

(5) Protect and enhance the environment, promote energy conservation, improve the quality of life, and promote consistency between transportation improvements and State and local planned growth and economic development patterns;

(6) Enhance the integration and connectivity of the transportation system, across and between modes, for people and freight;

(7) Promote efficient system management and operation; and

(8) Emphasize the preservation of the existing transportation system.

(b) Consideration of the planning factors in paragraph (a) of this section shall be reflected, as appropriate, in the metropolitan transportation planning process. The degree of consideration and analysis of the factors should be based on the scale and complexity of many issues, including transportation system development, land use, employment, economic development, human and natural environment, and housing and community development.

(c) The failure to consider any factor specified in paragraph (a) of this section shall not be reviewable by any court under title 23 U.S.C., 49 U.S.C. Chapter 53, subchapter II of title 5, U.S.C. Chapter 5, or title 5 U.S.C. Chapter 7 in any matter affecting a metropolitan transportation plan, TIP, a project or strategy, or the certification of a metropolitan transportation planning process.

(d) The metropolitan transportation planning process shall be carried out in coordination with the statewide transportation planning process required by 23 U.S.C. 135 and 49 U.S.C. 5304.

(e) In carrying out the metropolitan transportation planning process,

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MPOs, States, and public transportation operators may apply asset management principles and techniques in establishing planning goals, defining TIP priorities, and assessing transportation investment decisions, including transportation system safety, operations, preservation, and maintenance, as well as strategies and policies to support homeland security and to safeguard the personal security of all motorized and non-motorized users.

(f) The metropolitan transportation planning process shall (to the maximum extent practicable) be consistent with the development of applicable regional intelligent transportation systems (ITS) architectures, as defined in 23 CFR part 940.

(g) Preparation of the coordinated public transit-human services transportation plan, as required by 49 U.S.C. 5310, 5316, and 5317, should be coordinated and consistent with the metropolitan transportation planning process.

(h) The metropolitan transportation planning process should be consistent with the Strategic Highway Safety Plan, as specified in 23 U.S.C. 148, and other transit safety and security planning and review processes, plans, and programs, as appropriate.

(i) The FHWA and the FTA shall designate as a transportation management area (TMA) each urbanized area with a population of over 200,000 individuals, as defined by the Bureau of the Census. The FHWA and the FTA shall also designate any additional urbanized area as a TMA on the request of the Governor and the MPO designated for that area.

(j) In an urbanized area not designated as a TMA that is an air quality attainment area, the MPO(s) may propose and submit to the FHWA and the FTA for approval a procedure for developing an abbreviated metropolitan transportation plan and TIP. In developing proposed simplified planning procedures, consideration shall be given to whether the abbreviated metropolitan transportation plan and TIP will achieve the purposes of 23 U.S.C. 134, 49 U.S.C. 5303, and these regulations, taking into account the complexity of the transportation problems in the area. The simplified procedures shall be de-

veloped by the MPO in cooperation with the State(s) and public transportation operator(s).

§ 450.308 Funding for transportation planning and unified planning work programs.

(a) Funds provided under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), 49 U.S.C. 5307, and 49 U.S.C. 5339 are available to MPOs to accomplish activities in this subpart. At the State's option, funds provided under 23 U.S.C. 104(b)(1) and (b)(3) and 23 U.S.C. 105 may also be provided to MPOs for metropolitan transportation planning. In addition, an MPO serving an urbanized area with a population over 200,000, as designated by the Bureau of the Census, may at its discretion use funds sub-allocated under 23 U.S.C. 133(d)(3)(E) for metropolitan transportation planning activities.

(b) Metropolitan transportation planning activities performed with funds provided under title 23 U.S.C. and title 49 U.S.C. Chapter 53 shall be documented in a unified planning work program (UPWP) or simplified statement of work in accordance with the provisions of this section and 23 CFR part 420.

(c) Except as provided in paragraph (d) of this section, each MPO, in cooperation with the State(s) and public transportation operator(s), shall develop a UPWP that includes a discussion of the planning priorities facing the MPA. The UPWP shall identify work proposed for the next one- or two-year period by major activity and task (including activities that address the planning factors in § 450.306(a)), in sufficient detail to indicate who (e.g., MPO, State, public transportation operator, local government, or consultant) will perform the work, the schedule for completing the work, the resulting products, the proposed funding by activity/task, and a summary of the total amounts and sources of Federal and matching funds.

(d) With the prior approval of the State and the FHWA and the FTA, an MPO in an area not designated as a TMA may prepare a simplified statement of work, in cooperation with the State(s) and the public transportation

operator(s), in lieu of a UPWP. A simplified statement of work would include a description of the major activities to be performed during the next one- or two-year period, who (e.g., State, MPO, public transportation operator, local government, or consultant) will perform the work, the resulting products, and a summary of the total amounts and sources of Federal and matching funds. If a simplified statement of work is used, it may be submitted as part of the State's planning work program, in accordance with 23 CFR part 420.

(e) Arrangements may be made with the FHWA and the FTA to combine the UPWP or simplified statement of work with the work program(s) for other Federal planning funds.

(f) Administrative requirements for UPWPs and simplified statements of work are contained in 23 CFR part 420 and FTA Circular C8100.1B (Program Guidance and Application Instructions for Metropolitan Planning Grants).

§ 450.310 Metropolitan planning organization designation and redesignation.

(a) To carry out the metropolitan transportation planning process under this subpart, a metropolitan planning organization (MPO) shall be designated for each urbanized area with a population of more than 50,000 individuals (as determined by the Bureau of the Census).

(b) MPO designation shall be made by agreement between the Governor and units of general purpose local government that together represent at least 75 percent of the affected population (including the largest incorporated city, based on population, as named by the Bureau of the Census) or in accordance with procedures established by applicable State or local law.

(c) Each Governor with responsibility for a portion of a multistate metropolitan area and the appropriate MPOs shall, to the extent practicable, provide coordinated transportation planning for the entire MPA. The consent of Congress is granted to any two or more States to:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative ef-

forts and mutual assistance in support of activities authorized under 23 U.S.C. 134 and 49 U.S.C. 5303 as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(d) Each MPO that serves a TMA, when designated or redesignated under this section, shall consist of local elected officials, officials of public agencies that administer or operate major modes of transportation in the metropolitan planning area, and appropriate State transportation officials. Where appropriate, MPOs may increase the representation of local elected officials, public transportation agencies, or appropriate State officials on their policy boards and other committees as a means for encouraging greater involvement in the metropolitan transportation planning process, subject to the requirements of paragraph (k) of this section.

(e) To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas. More than one MPO may be designated to serve an urbanized area only if the Governor(s) and the existing MPO, if applicable, determine that the size and complexity of the urbanized area make designation of more than one MPO appropriate. In those cases where two or more MPOs serve the same urbanized area, the MPOs shall establish official, written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among the MPOs.

(f) Nothing in this subpart shall be deemed to prohibit an MPO from using the staff resources of other agencies, non-profit organizations, or contractors to carry out selected elements of the metropolitan transportation planning process.

(g) An MPO designation shall remain in effect until an official redesignation has been made in accordance with this section.

(h) An existing MPO may be redesignated only by agreement between the Governor and units of general purpose

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local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(i) Redesignation of an MPO serving a multistate metropolitan planning area requires agreement between the Governors of each State served by the existing MPO and units of general purpose local government that together represent at least 75 percent of the existing metropolitan planning area population (including the largest incorporated city, based on population, as named by the Bureau of the Census).

(j) For the purposes of redesignation, units of general purpose local government may be defined as elected officials from each unit of general purpose local government located within the metropolitan planning area served by the existing MPO.

(k) Redesignation of an MPO (in accordance with the provisions of this section) is required whenever the existing MPO proposes to make:

(1) A substantial change in the proportion of voting members on the existing MPO representing the largest incorporated city, other units of general purpose local government served by the MPO, and the State(s); or

(2) A substantial change in the decisionmaking authority or responsibility of the MPO, or in decisionmaking procedures established under MPO by-laws.

(l) The following changes to an MPO do not require a redesignation (as long as they do not trigger a substantial change as described in paragraph (k) of the section):

(1) The identification of a new urbanized area (as determined by the Bureau of the Census) within an existing metropolitan planning area;

(2) Adding members to the MPO that represent new units of general purpose local government resulting from expansion of the metropolitan planning area;

(3) Adding members to satisfy the specific membership requirements for an MPO that serves a TMA; or

(4) Periodic rotation of members representing units of general-purpose

local government, as established under MPO by-laws.

§ 450.312 Metropolitan planning area boundaries.

(a) The boundaries of a metropolitan planning area (MPA) shall be determined by agreement between the MPO and the Governor. At a minimum, the MPA boundaries shall encompass the entire existing urbanized area (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a 20-year forecast period for the metropolitan transportation plan. The MPA boundaries may be further expanded to encompass the entire metropolitan statistical area or combined statistical area, as defined by the Office of Management and Budget.

(b) An MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) as of August 10, 2005, shall retain the MPA boundary that existed on August 10, 2005. The MPA boundaries for such MPOs may only be adjusted by agreement of the Governor and the affected MPO in accordance with the redesignation procedures described in § 450.310(h). The MPA boundary for an MPO that serves an urbanized area designated as a nonattainment area for ozone or carbon monoxide under the Clean Air Act (42 U.S.C. 7401 *et seq.*) after August 10, 2005 may be established to coincide with the designated boundaries of the ozone and/or carbon monoxide nonattainment area, in accordance with the requirements in § 450.310(b).

(c) An MPA boundary may encompass more than one urbanized area.

(d) MPA boundaries may be established to coincide with the geography of regional economic development and growth forecasting areas.

(e) Identification of new urbanized areas within an existing metropolitan planning area by the Bureau of the Census shall not require redesignation of the existing MPO.

(f) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, MPO(s), and the public

transportation operator(s) are strongly encouraged to coordinate transportation planning for the entire multistate area.

(g) The MPA boundaries shall not overlap with each other.

(h) Where part of an urbanized area served by one MPO extends into an adjacent MPA, the MPOs shall, at a minimum, establish written agreements that clearly identify areas of coordination and the division of transportation planning responsibilities among and between the MPOs. Alternatively, the MPOs may adjust their existing boundaries so that the entire urbanized area lies within only one MPA. Boundary adjustments that change the composition of the MPO may require redesignation of one or more such MPOs.

(i) The MPA boundaries shall be reviewed after each Census by the MPO (in cooperation with the State and public transportation operator(s)) to determine if existing MPA boundaries meet the minimum statutory requirements for new and updated urbanized area(s), and shall be adjusted as necessary. As appropriate, additional adjustments should be made to reflect the most comprehensive boundary to foster an effective planning process that ensures connectivity between modes, reduces access disadvantages experienced by modal systems, and promotes efficient overall transportation investment strategies.

(j) Following MPA boundary approval by the MPO and the Governor, the MPA boundary descriptions shall be provided for informational purposes to the FHWA and the FTA. The MPA boundary descriptions shall be submitted either as a geo-spatial database or described in sufficient detail to enable the boundaries to be accurately delineated on a map.

§ 450.314 Metropolitan planning agreements.

(a) The MPO, the State(s), and the public transportation operator(s) shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the public transportation oper-

ator(s) serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for cooperatively developing and sharing information related to the development of financial plans that support the metropolitan transportation plan (see § 450.322) and the metropolitan TIP (see § 450.324) and development of the annual listing of obligated projects (see § 450.332).

(b) If the MPA does not include the entire nonattainment or maintenance area, there shall be a written agreement among the State department of transportation, State air quality agency, affected local agencies, and the MPO describing the process for cooperative planning and analysis of all projects outside the MPA within the nonattainment or maintenance area. The agreement must also indicate how the total transportation-related emissions for the nonattainment or maintenance area, including areas outside the MPA, will be treated for the purposes of determining conformity in accordance with the EPA's transportation conformity rule (40 CFR part 93). The agreement shall address policy mechanisms for resolving conflicts concerning transportation-related emissions that may arise between the MPA and the portion of the nonattainment or maintenance area outside the MPA.

(c) In nonattainment or maintenance areas, if the MPO is not the designated agency for air quality planning under section 174 of the Clean Air Act (42 U.S.C. 7504), there shall be a written agreement between the MPO and the designated air quality planning agency describing their respective roles and responsibilities for air quality related transportation planning.

(d) If more than one MPO has been designated to serve an urbanized area, there shall be a written agreement among the MPOs, the State(s), and the public transportation operator(s) describing how the metropolitan transportation planning processes will be coordinated to assure the development of consistent metropolitan transportation plans and TIPs across the MPA boundaries, particularly in cases in which a

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proposed transportation investment extends across the boundaries of more than one MPA. If any part of the urbanized area is a nonattainment or maintenance area, the agreement also shall include State and local air quality agencies. The metropolitan transportation planning processes for affected MPOs should, to the maximum extent possible, reflect coordinated data collection, analysis, and planning assumptions across the MPAs. Alternatively, a single metropolitan transportation plan and/or TIP for the entire urbanized area may be developed jointly by the MPOs in cooperation with their respective planning partners. Coordination efforts and outcomes shall be documented in subsequent transmittals of the UPWP and other planning products, including the metropolitan transportation plan and TIP, to the State(s), the FHWA, and the FTA.

(e) Where the boundaries of the urbanized area or MPA extend across two or more States, the Governors with responsibility for a portion of the multistate area, the appropriate MPO(s), and the public transportation operator(s) shall coordinate transportation planning for the entire multistate area. States involved in such multistate transportation planning may:

(1) Enter into agreements or compacts, not in conflict with any law of the United States, for cooperative efforts and mutual assistance in support of activities authorized under this section as the activities pertain to interstate areas and localities within the States; and

(2) Establish such agencies, joint or otherwise, as the States may determine desirable for making the agreements and compacts effective.

(f) If part of an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not designated as a TMA, the adjacent urbanized area shall not be treated as a TMA. However, a written agreement shall be established between the MPOs with MPA boundaries including a portion of the TMA, which clearly identifies the roles and responsibilities of each MPO in meeting specific TMA requirements (e.g.,

congestion management process, Surface Transportation Program funds suballocated to the urbanized area over 200,000 population, and project selection).

§ 450.316 Interested parties, participation, and consultation.

(a) The MPO shall develop and use a documented participation plan that defines a process for providing citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The participation plan shall be developed by the MPO in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:

(i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including but not limited to a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;

(ii) Providing timely notice and reasonable access to information about transportation issues and processes;

(iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;

(iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;

(v) Holding any public meetings at convenient and accessible locations and times;

(vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;

(vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts;

(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and

(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

(2) When significant written and oral comments are received on the draft metropolitan transportation plan and TIP (including the financial plans) as a result of the participation process in this section or the interagency consultation process required under the EPA transportation conformity regulations (40 CFR part 93), a summary, analysis, and report on the disposition of comments shall be made as part of the final metropolitan transportation plan and TIP.

(3) A minimum public comment period of 45 calendar days shall be provided before the initial or revised participation plan is adopted by the MPO. Copies of the approved participation plan shall be provided to the FHWA and the FTA for informational purposes and shall be posted on the World Wide Web, to the maximum extent practicable.

(b) In developing metropolitan transportation plans and TIPs, the MPO should consult with agencies and officials responsible for other planning activities within the MPA that are affected by transportation (including State and local planned growth, economic development, environmental protection, airport operations, or freight movements) or coordinate its

planning process (to the maximum extent practicable) with such planning activities. In addition, metropolitan transportation plans and TIPs shall be developed with due consideration of other related planning activities within the metropolitan area, and the process shall provide for the design and delivery of transportation services within the area that are provided by:

(1) Recipients of assistance under title 49 U.S.C. Chapter 53;

(2) Governmental agencies and non-profit organizations (including representatives of the agencies and organizations) that receive Federal assistance from a source other than the U.S. Department of Transportation to provide non-emergency transportation services; and

(3) Recipients of assistance under 23 U.S.C. 204.

(c) When the MPA includes Indian Tribal lands, the MPO shall appropriately involve the Indian Tribal government(s) in the development of the metropolitan transportation plan and the TIP.

(d) When the MPA includes Federal public lands, the MPO shall appropriately involve the Federal land management agencies in the development of the metropolitan transportation plan and the TIP.

(e) MPOs shall, to the extent practicable, develop a documented process(es) that outlines roles, responsibilities, and key decision points for consulting with other governments and agencies, as defined in paragraphs (b), (c), and (d) of this section, which may be included in the agreement(s) developed under § 450.314.

§ 450.318 Transportation planning studies and project development.

(a) Pursuant to section 1308 of the Transportation Equity Act for the 21st Century, TEA-21 (Pub. L. 105-178), an MPO(s), State(s), or public transportation operator(s) may undertake a multimodal, systems-level corridor or subarea planning study as part of the metropolitan transportation planning process. To the extent practicable, development of these transportation planning studies shall involve consultation with, or joint efforts among, the MPO(s), State(s), and/or public

transportation operator(s). The results or decisions of these transportation planning studies may be used as part of the overall project development process consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and associated implementing regulations (23 CFR part 771 and 40 CFR parts 1500–1508). Specifically, these corridor or subarea studies may result in producing any of the following for a proposed transportation project:

- (1) Purpose and need or goals and objective statement(s);
- (2) General travel corridor and/or general mode(s) definition (e.g., highway, transit, or a highway/transit combination);
- (3) Preliminary screening of alternatives and elimination of unreasonable alternatives;
- (4) Basic description of the environmental setting; and/or
- (5) Preliminary identification of environmental impacts and environmental mitigation.

(b) Publicly available documents or other source material produced by, or in support of, the transportation planning process described in this subpart may be incorporated directly or by reference into subsequent NEPA documents, in accordance with 40 CFR 1502.21, if:

- (1) The NEPA lead agencies agree that such incorporation will aid in establishing or evaluating the purpose and need for the Federal action, reasonable alternatives, cumulative or other impacts on the human and natural environment, or mitigation of these impacts; and
- (2) The systems-level, corridor, or subarea planning study is conducted with:
 - (i) Involvement of interested State, local, Tribal, and Federal agencies;
 - (ii) Public review;
 - (iii) Reasonable opportunity to comment during the metropolitan transportation planning process and development of the corridor or subarea planning study;
 - (iv) Documentation of relevant decisions in a form that is identifiable and available for review during the NEPA scoping process and can be appended to

or referenced in the NEPA document; and

(v) The review of the FHWA and the FTA, as appropriate.

(c) By agreement of the NEPA lead agencies, the above integration may be accomplished through tiering (as described in 40 CFR 1502.20), incorporating the subarea or corridor planning study into the draft Environmental Impact Statement (EIS) or Environmental Assessment, or other means that the NEPA lead agencies deem appropriate.

(d) For transit fixed guideway projects requiring an Alternatives Analysis (49 U.S.C. 5309(d) and (e)), the Alternatives Analysis described in 49 CFR part 611 constitutes the planning required by section 1308 of the TEA–21. The Alternatives Analysis may or may not be combined with the preparation of a NEPA document (e.g., a draft EIS). When an Alternatives Analysis is separate from the preparation of a NEPA document, the results of the Alternatives Analysis may be used during a subsequent environmental review process as described in paragraph (a).

(e) Additional information to further explain the linkages between the transportation planning and project development/NEPA processes is contained in Appendix A to this part, including an explanation that it is non-binding guidance material.

§ 450.320 Congestion management process in transportation management areas.

(a) The transportation planning process in a TMA shall address congestion management through a process that provides for safe and effective integrated management and operation of the multimodal transportation system, based on a cooperatively developed and implemented metropolitan-wide strategy, of new and existing transportation facilities eligible for funding under title 23 U.S.C. and title 49 U.S.C. Chapter 53 through the use of travel demand reduction and operational management strategies.

(b) The development of a congestion management process should result in

multimodal system performance measures and strategies that can be reflected in the metropolitan transportation plan and the TIP. The level of system performance deemed acceptable by State and local transportation officials may vary by type of transportation facility, geographic location (metropolitan area or subarea), and/or time of day. In addition, consideration should be given to strategies that manage demand, reduce single occupant vehicle (SOV) travel, and improve transportation system management and operations. Where the addition of general purpose lanes is determined to be an appropriate congestion management strategy, explicit consideration is to be given to the incorporation of appropriate features into the SOV project to facilitate future demand management strategies and operational improvements that will maintain the functional integrity and safety of those lanes.

(c) The congestion management process shall be developed, established, and implemented as part of the metropolitan transportation planning process that includes coordination with transportation system management and operations activities. The congestion management process shall include:

(1) Methods to monitor and evaluate the performance of the multimodal transportation system, identify the causes of recurring and non-recurring congestion, identify and evaluate alternative strategies, provide information supporting the implementation of actions, and evaluate the effectiveness of implemented actions;

(2) Definition of congestion management objectives and appropriate performance measures to assess the extent of congestion and support the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since levels of acceptable system performance may vary among local communities, performance measures should be tailored to the specific needs of the area and established cooperatively by the State(s), affected MPO(s), and local officials in consultation with the operators of major modes of transportation in the coverage area;

(3) Establishment of a coordinated program for data collection and system performance monitoring to define the extent and duration of congestion, to contribute in determining the causes of congestion, and evaluate the efficiency and effectiveness of implemented actions. To the extent possible, this data collection program should be coordinated with existing data sources (including archived operational/ITS data) and coordinated with operations managers in the metropolitan area;

(4) Identification and evaluation of the anticipated performance and expected benefits of appropriate congestion management strategies that will contribute to the more effective use and improved safety of existing and future transportation systems based on the established performance measures. The following categories of strategies, or combinations of strategies, are some examples of what should be appropriately considered for each area:

(i) Demand management measures, including growth management and congestion pricing;

(ii) Traffic operational improvements;

(iii) Public transportation improvements;

(iv) ITS technologies as related to the regional ITS architecture; and

(v) Where necessary, additional system capacity;

(5) Identification of an implementation schedule, implementation responsibilities, and possible funding sources for each strategy (or combination of strategies) proposed for implementation; and

(6) Implementation of a process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures. The results of this evaluation shall be provided to decisionmakers and the public to provide guidance on selection of effective strategies for future implementation.

(d) In a TMA designated as non-attainment area for ozone or carbon monoxide pursuant to the Clean Air Act, Federal funds may not be programmed for any project that will result in a significant increase in the carrying capacity for SOVs (*i.e.*, a new

general purpose highway on a new location or adding general purpose lanes, with the exception of safety improvements or the elimination of bottlenecks), unless the project is addressed through a congestion management process meeting the requirements of this section.

(e) In TMAs designated as nonattainment for ozone or carbon monoxide, the congestion management process shall provide an appropriate analysis of reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (as described in paragraph (d) of this section) is proposed to be advanced with Federal funds. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the congestion management process shall identify all reasonable strategies to manage the SOV facility safely and effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself, shall also be identified through the congestion management process. All identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) State laws, rules, or regulations pertaining to congestion management systems or programs may constitute the congestion management process, if the FHWA and the FTA find that the State laws, rules, or regulations are consistent with, and fulfill the intent of, the purposes of 23 U.S.C. 134 and 49 U.S.C. 5303.

§ 450.322 Development and content of the metropolitan transportation plan.

(a) The metropolitan transportation planning process shall include the development of a transportation plan addressing no less than a 20-year plan-

ning horizon as of the effective date. In nonattainment and maintenance areas, the effective date of the transportation plan shall be the date of a conformity determination issued by the FHWA and the FTA. In attainment areas, the effective date of the transportation plan shall be its date of adoption by the MPO.

(b) The transportation plan shall include both long-range and short-range strategies/actions that lead to the development of an integrated multimodal transportation system to facilitate the safe and efficient movement of people and goods in addressing current and future transportation demand.

(c) The MPO shall review and update the transportation plan at least every four years in air quality nonattainment and maintenance areas and at least every five years in attainment areas to confirm the transportation plan's validity and consistency with current and forecasted transportation and land use conditions and trends and to extend the forecast period to at least a 20-year planning horizon. In addition, the MPO may revise the transportation plan at any time using the procedures in this section without a requirement to extend the horizon year. The transportation plan (and any revisions) shall be approved by the MPO and submitted for information purposes to the Governor. Copies of any updated or revised transportation plans must be provided to the FHWA and the FTA.

(d) In metropolitan areas that are in nonattainment for ozone or carbon monoxide, the MPO shall coordinate the development of the metropolitan transportation plan with the process for developing transportation control measures (TCMs) in a State Implementation Plan (SIP).

(e) The MPO, the State(s), and the public transportation operator(s) shall validate data utilized in preparing other existing modal plans for providing input to the transportation plan. In updating the transportation plan, the MPO shall base the update on the latest available estimates and assumptions for population, land use, travel, employment, congestion, and economic activity. The MPO shall approve transportation plan contents and

supporting analyses produced by a transportation plan update.

(f) The metropolitan transportation plan shall, at a minimum, include:

(1) The projected transportation demand of persons and goods in the metropolitan planning area over the period of the transportation plan;

(2) Existing and proposed transportation facilities (including major roadways, transit, multimodal and intermodal facilities, pedestrian walkways and bicycle facilities, and intermodal connectors) that should function as an integrated metropolitan transportation system, giving emphasis to those facilities that serve important national and regional transportation functions over the period of the transportation plan. In addition, the locally preferred alternative selected from an Alternatives Analysis under the FTA's Capital Investment Grant program (49 U.S.C. 5309 and 49 CFR part 611) needs to be adopted as part of the metropolitan transportation plan as a condition for funding under 49 U.S.C. 5309;

(3) Operational and management strategies to improve the performance of existing transportation facilities to relieve vehicular congestion and maximize the safety and mobility of people and goods;

(4) Consideration of the results of the congestion management process in TMAs that meet the requirements of this subpart, including the identification of SOV projects that result from a congestion management process in TMAs that are nonattainment for ozone or carbon monoxide;

(5) Assessment of capital investment and other strategies to preserve the existing and projected future metropolitan transportation infrastructure and provide for multimodal capacity increases based on regional priorities and needs. The metropolitan transportation plan may consider projects and strategies that address areas or corridors where current or projected congestion threatens the efficient functioning of key elements of the metropolitan area's transportation system;

(6) Design concept and design scope descriptions of all existing and proposed transportation facilities in sufficient detail, regardless of funding source, in nonattainment and maintenance

areas for conformity determinations under the EPA's transportation conformity rule (40 CFR part 93). In all areas (regardless of air quality designation), all proposed improvements shall be described in sufficient detail to develop cost estimates;

(7) A discussion of types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the metropolitan transportation plan. The discussion may focus on policies, programs, or strategies, rather than at the project level. The discussion shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies. The MPO may establish reasonable timeframes for performing this consultation;

(8) Pedestrian walkway and bicycle transportation facilities in accordance with 23 U.S.C. 217(g);

(9) Transportation and transit enhancement activities, as appropriate; and

(10) A financial plan that demonstrates how the adopted transportation plan can be implemented.

(i) For purposes of transportation system operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53).

(ii) For the purpose of developing the metropolitan transportation plan, the MPO, public transportation operator(s), and State shall cooperatively develop estimates of funds that will be available to support metropolitan transportation plan implementation, as required under § 450.314(a). All necessary financial resources from public and private sources that are reasonably expected to be made available to carry out the transportation plan shall be identified.

(iii) The financial plan shall include recommendations on any additional financing strategies to fund projects and programs included in the metropolitan

transportation plan. In the case of new funding sources, strategies for ensuring their availability shall be identified.

(iv) In developing the financial plan, the MPO shall take into account all projects and strategies proposed for funding under title 23 U.S.C., title 49 U.S.C. Chapter 53 or with other Federal funds; State assistance; local sources; and private participation. Starting December 11, 2007, revenue and cost estimates that support the metropolitan transportation plan must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(v) For the outer years of the metropolitan transportation plan (*i.e.*, beyond the first 10 years), the financial plan may reflect aggregate cost ranges/cost bands, as long as the future funding source(s) is reasonably expected to be available to support the projected cost ranges/cost bands.

(vi) For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of TCMs in the applicable SIP.

(vii) For illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the adopted transportation plan if additional resources beyond those identified in the financial plan were to become available.

(viii) In cases that the FHWA and the FTA find a metropolitan transportation plan to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint; however, in such cases, the FHWA and the FTA will not act on an updated or amended metropolitan transportation plan that does not reflect the changed revenue situation.

(g) The MPO shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the develop-

ment of the transportation plan. The consultation shall involve, as appropriate:

(1) Comparison of transportation plans with State conservation plans or maps, if available; or

(2) Comparison of transportation plans to inventories of natural or historic resources, if available.

(h) The metropolitan transportation plan should include a safety element that incorporates or summarizes the priorities, goals, countermeasures, or projects for the MPA contained in the Strategic Highway Safety Plan required under 23 U.S.C. 148, as well as (as appropriate) emergency relief and disaster preparedness plans and strategies and policies that support homeland security (as appropriate) and safeguard the personal security of all motorized and non-motorized users.

(i) The MPO shall provide citizens, affected public agencies, representatives of public transportation employees, freight shippers, providers of freight transportation services, private providers of transportation, representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with a reasonable opportunity to comment on the transportation plan using the participation plan developed under § 450.316(a).

(j) The metropolitan transportation plan shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web.

(k) A State or MPO shall not be required to select any project from the illustrative list of additional projects included in the financial plan under paragraph (f)(10) of this section.

(l) In nonattainment and maintenance areas for transportation-related pollutants, the MPO, as well as the FHWA and the FTA, must make a conformity determination on any updated or amended transportation plan in accordance with the Clean Air Act and the EPA transportation conformity regulations (40 CFR part 93). During a conformity lapse, MPOs can prepare an

interim metropolitan transportation plan as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim metropolitan transportation plan consisting of eligible projects from, or consistent with, the most recent conforming transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim metropolitan transportation plan containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

§ 450.324 Development and content of the transportation improvement program (TIP).

(a) The MPO, in cooperation with the State(s) and any affected public transportation operator(s), shall develop a TIP for the metropolitan planning area. The TIP shall cover a period of no less than four years, be updated at least every four years, and be approved by the MPO and the Governor. However, if the TIP covers more than four years, the FHWA and the FTA will consider the projects in the additional years as informational. The TIP may be updated more frequently, but the cycle for updating the TIP must be compatible with the STIP development and approval process. The TIP expires when the FHWA/FTA approval of the STIP expires. Copies of any updated or revised TIPs must be provided to the FHWA and the FTA. In nonattainment and maintenance areas subject to transportation conformity requirements, the FHWA and the FTA, as well as the MPO, must make a conformity determination on any updated or amended TIP, in accordance with the Clean Air Act requirements and the EPA's transportation conformity regulations (40 CFR part 93).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be ad-

dressed through the participation plan described in § 450.316(a). In addition, the TIP shall be published or otherwise made readily available by the MPO for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

(c) The TIP shall include capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under 23 U.S.C. and 49 U.S.C. Chapter 53 (including transportation enhancements; Federal Lands Highway program projects; safety projects included in the State's Strategic Highway Safety Plan; trails projects; pedestrian walkways; and bicycle facilities), except the following that may (but are not required to) be included:

(1) Safety projects funded under 23 U.S.C. 402 and 49 U.S.C. 31102;

(2) Metropolitan planning projects funded under 23 U.S.C. 104(f), 49 U.S.C. 5305(d), and 49 U.S.C. 5339;

(3) State planning and research projects funded under 23 U.S.C. 505 and 49 U.S.C. 5305(e);

(4) At the discretion of the State and MPO, State planning and research projects funded with National Highway System, Surface Transportation Program, and/or Equity Bonus funds;

(5) Emergency relief projects (except those involving substantial functional, locational, or capacity changes);

(6) National planning and research projects funded under 49 U.S.C. 5314; and

(7) Project management oversight projects funded under 49 U.S.C. 5327.

(d) The TIP shall contain all regionally significant projects requiring an action by the FHWA or the FTA whether or not the projects are to be funded under title 23 U.S.C. Chapters 1 and 2 or title 49 U.S.C. Chapter 53 (e.g., addition of an interchange to the Interstate System with State, local, and/or private funds and congressionally designated projects not funded under 23 U.S.C. or 49 U.S.C. Chapter 53). For public information and conformity purposes, the TIP shall include all regionally significant projects proposed to be funded with Federal funds other than

those administered by the FHWA or the FTA, as well as all regionally significant projects to be funded with non-Federal funds.

(e) The TIP shall include, for each project or phase (e.g., preliminary engineering, environment/NEPA, right-of-way, design, or construction), the following:

(1) Sufficient descriptive material (*i.e.*, type of work, termini, and length) to identify the project or phase;

(2) Estimated total project cost, which may extend beyond the four years of the TIP;

(3) The amount of Federal funds proposed to be obligated during each program year for the project or phase (for the first year, this includes the proposed category of Federal funds and source(s) of non-Federal funds. For the second, third, and fourth years, this includes the likely category or possible categories of Federal funds and sources of non-Federal funds);

(4) Identification of the agencies responsible for carrying out the project or phase;

(5) In nonattainment and maintenance areas, identification of those projects which are identified as TCMs in the applicable SIP;

(6) In nonattainment and maintenance areas, included projects shall be specified in sufficient detail (design concept and scope) for air quality analysis in accordance with the EPA transportation conformity regulation (40 CFR part 93); and

(7) In areas with Americans with Disabilities Act required paratransit and key station plans, identification of those projects that will implement these plans.

(f) Projects that are not considered to be of appropriate scale for individual identification in a given program year may be grouped by function, work type, and/or geographic area using the applicable classifications under 23 CFR 771.117(c) and (d) and/or 40 CFR part 93. In nonattainment and maintenance areas, project classifications must be consistent with the “exempt project” classifications contained in the EPA transportation conformity regulation (40 CFR part 93). In addition, projects proposed for funding under title 23 U.S.C. Chapter 2 that are not region-

ally significant may be grouped in one line item or identified individually in the TIP.

(g) Each project or project phase included in the TIP shall be consistent with the approved metropolitan transportation plan.

(h) The TIP shall include a financial plan that demonstrates how the approved TIP can be implemented, indicates resources from public and private sources that are reasonably expected to be made available to carry out the TIP, and recommends any additional financing strategies for needed projects and programs. In developing the TIP, the MPO, State(s), and public transportation operator(s) shall cooperatively develop estimates of funds that are reasonably expected to be available to support TIP implementation, in accordance with § 450.314(a). Only projects for which construction or operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial plan, the MPO shall take into account all projects and strategies funded under title 23 U.S.C., title 49 U.S.C. Chapter 53 and other Federal funds; and regionally significant projects that are not federally funded. For purposes of transportation operations and maintenance, the financial plan shall contain system-level estimates of costs and revenue sources that are reasonably expected to be available to adequately operate and maintain Federal-aid highways (as defined by 23 U.S.C. 101(a)(5)) and public transportation (as defined by title 49 U.S.C. Chapter 53). In addition, for illustrative purposes, the financial plan may (but is not required to) include additional projects that would be included in the TIP if reasonable additional resources beyond those identified in the financial plan were to become available. Starting December 11, 2007, revenue and cost estimates for the TIP must use an inflation rate(s) to reflect “year of expenditure dollars,” based on reasonable financial principles and information, developed cooperatively by the MPO, State(s), and public transportation operator(s).

(i) The TIP shall include a project, or a phase of a project, only if full funding

can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project. In nonattainment and maintenance areas, projects included in the first two years of the TIP shall be limited to those for which funds are available or committed. For the TIP, financial constraint shall be demonstrated and maintained by year and shall include sufficient financial information to demonstrate which projects are to be implemented using current and/or reasonably available revenues, while federally supported facilities are being adequately operated and maintained. In the case of proposed funding sources, strategies for ensuring their availability shall be identified in the financial plan consistent with paragraph (h) of this section. In nonattainment and maintenance areas, the TIP shall give priority to eligible TCMs identified in the approved SIP in accordance with the EPA transportation conformity regulation (40 CFR part 93) and shall provide for their timely implementation.

(j) Procedures or agreements that distribute suballocated Surface Transportation Program funds or funds under 49 U.S.C. 5307 to individual jurisdictions or modes within the MPA by pre-determined percentages or formulas are inconsistent with the legislative provisions that require the MPO, in cooperation with the State and the public transportation operator, to develop a prioritized and financially constrained TIP and shall not be used unless they can be clearly shown to be based on considerations required to be addressed as part of the metropolitan transportation planning process.

(k) For the purpose of including projects funded under 49 U.S.C. 5309 in a TIP, the following approach shall be followed:

(1) The total Federal share of projects included in the first year of the TIP shall not exceed levels of funding committed to the MPA; and

(2) The total Federal share of projects included in the second, third, fourth, and/or subsequent years of the TIP may not exceed levels of funding committed, or reasonably expected to be available, to the MPA.

(1) As a management tool for monitoring progress in implementing the transportation plan, the TIP should:

(1) Identify the criteria and process for prioritizing implementation of transportation plan elements (including multimodal trade-offs) for inclusion in the TIP and any changes in priorities from previous TIPs;

(2) List major projects from the previous TIP that were implemented and identify any significant delays in the planned implementation of major projects; and

(3) In nonattainment and maintenance areas, describe the progress in implementing any required TCMs, in accordance with 40 CFR part 93.

(m) During a conformity lapse, MPOs may prepare an interim TIP as a basis for advancing projects that are eligible to proceed under a conformity lapse. An interim TIP consisting of eligible projects from, or consistent with, the most recent conforming metropolitan transportation plan and TIP may proceed immediately without revisiting the requirements of this section, subject to interagency consultation defined in 40 CFR part 93. An interim TIP containing eligible projects that are not from, or consistent with, the most recent conforming transportation plan and TIP must meet all the requirements of this section.

(n) Projects in any of the first four years of the TIP may be advanced in place of another project in the first four years of the TIP, subject to the project selection requirements of § 450.330. In addition, the TIP may be revised at any time under procedures agreed to by the State, MPO(s), and public transportation operator(s) consistent with the TIP development procedures established in this section, as well as the procedures for the MPO participation plan (see § 450.316(a)) and FHWA/FTA actions on the TIP (see § 450.328).

(o) In cases that the FHWA and the FTA find a TIP to be fiscally constrained and a revenue source is subsequently removed or substantially reduced (*i.e.*, by legislative or administrative actions), the FHWA and the FTA will not withdraw the original determination of fiscal constraint. However, in such cases, the FHWA and the

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FTA will not act on an updated or amended TIP that does not reflect the changed revenue situation.

[72 FR 7261, Feb. 14, 2007; 72 FR 11089, Mar. 12, 2007]

§ 450.326 TIP revisions and relationship to the STIP.

(a) An MPO may revise the TIP at any time under procedures agreed to by the cooperating parties consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation-related pollutants, if a TIP amendment involves non-exempt projects (per 40 CFR part 93), or is replaced with an updated TIP, the MPO and the FHWA and the FTA must make a new conformity determination. In all areas, changes that affect fiscal constraint must take place by amendment of the TIP. Public participation procedures consistent with § 450.316(a) shall be utilized in revising the TIP, except that these procedures are not required for administrative modifications.

(b) After approval by the MPO and the Governor, the TIP shall be included without change, directly or by reference, in the STIP required under 23 U.S.C. 135. In nonattainment and maintenance areas, a conformity finding on the TIP must be made by the FHWA and the FTA before it is included in the STIP. A copy of the approved TIP shall be provided to the FHWA and the FTA.

(c) The State shall notify the MPO and Federal land management agencies when a TIP including projects under the jurisdiction of these agencies has been included in the STIP.

§ 450.328 TIP action by the FHWA and the FTA.

(a) The FHWA and the FTA shall jointly find that each metropolitan TIP is consistent with the metropolitan transportation plan produced by the continuing and comprehensive transportation process carried on cooperatively by the MPO(s), the State(s), and the public transportation operator(s) in accordance with 23 U.S.C. 134 and 49 U.S.C. 5303. This finding shall be based on the self-certification statement submitted by the State and MPO under § 450.334, a review of the metropolitan transportation plan by the

FHWA and the FTA, and upon other reviews as deemed necessary by the FHWA and the FTA.

(b) In nonattainment and maintenance areas, the MPO, as well as the FHWA and the FTA, shall determine conformity of any updated or amended TIP, in accordance with 40 CFR part 93. After the FHWA and the FTA issue a conformity determination on the TIP, the TIP shall be incorporated, without change, into the STIP, directly or by reference.

(c) If the metropolitan transportation plan has not been updated in accordance with the cycles defined in § 450.322(c), projects may only be advanced from a TIP that was approved and found to conform (in nonattainment and maintenance areas) prior to expiration of the metropolitan transportation plan and meets the TIP update requirements of § 450.324(a). Until the MPO approves (in attainment areas) or the FHWA/FTA issues a conformity determination on (in nonattainment and maintenance areas) the updated metropolitan transportation plan, the TIP may not be amended.

(d) In the case of extenuating circumstances, the FHWA and the FTA will consider and take appropriate action on requests to extend the STIP approval period for all or part of the TIP in accordance with § 450.218(c).

(e) If an illustrative project is included in the TIP, no Federal action may be taken on that project by the FHWA and the FTA until it is formally included in the financially constrained and conforming metropolitan transportation plan and TIP.

(f) Where necessary in order to maintain or establish operations, the FHWA and the FTA may approve highway and transit operating assistance for specific projects or programs, even though the projects or programs may not be included in an approved TIP.

§ 450.330 Project selection from the TIP.

(a) Once a TIP that meets the requirements of 23 U.S.C. 134(j), 49 U.S.C. 5303(j), and § 450.324 has been developed and approved, the first year of the TIP shall constitute an “agreed to” list of projects for project selection purposes and no further project selection action

is required for the implementing agency to proceed with projects, except where the appropriated Federal funds available to the metropolitan planning area are significantly less than the authorized amounts or where there are significant shifting of projects between years. In this case, a revised “agreed to” list of projects shall be jointly developed by the MPO, the State, and the public transportation operator(s) if requested by the MPO, the State, or the public transportation operator(s). If the State or public transportation operator(s) wishes to proceed with a project in the second, third, or fourth year of the TIP, the specific project selection procedures stated in paragraphs (b) and (c) of this section must be used unless the MPO, the State, and the public transportation operator(s) jointly develop expedited project selection procedures to provide for the advancement of projects from the second, third, or fourth years of the TIP.

(b) In metropolitan areas not designated as TMAs, projects to be implemented using title 23 U.S.C. funds (other than Federal Lands Highway program projects) or funds under title 49 U.S.C. Chapter 53, shall be selected by the State and/or the public transportation operator(s), in cooperation with the MPO from the approved metropolitan TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(c) In areas designated as TMAs, all 23 U.S.C. and 49 U.S.C. Chapter 53 funded projects (excluding projects on the National Highway System (NHS) and projects funded under the Bridge, Interstate Maintenance, and Federal Lands Highway programs) shall be selected by the MPO in consultation with the State and public transportation operator(s) from the approved TIP and in accordance with the priorities in the approved TIP. Projects on the NHS and projects funded under the Bridge and Interstate Maintenance programs shall be selected by the State in cooperation with the MPO, from the approved TIP. Federal Lands Highway program projects shall be selected in accordance with procedures developed pursuant to 23 U.S.C. 204.

(d) Except as provided in § 450.324(c) and § 450.328(f), projects not included in the federally approved STIP shall not be eligible for funding with funds under title 23 U.S.C. or 49 U.S.C. Chapter 53.

(e) In nonattainment and maintenance areas, priority shall be given to the timely implementation of TCMs contained in the applicable SIP in accordance with the EPA transportation conformity regulations (40 CFR part 93).

§ 450.332 Annual listing of obligated projects.

(a) In metropolitan planning areas, on an annual basis, no later than 90 calendar days following the end of the program year, the State, public transportation operator(s), and the MPO shall cooperatively develop a listing of projects (including investments in pedestrian walkways and bicycle transportation facilities) for which funds under 23 U.S.C. or 49 U.S.C. Chapter 53 were obligated in the preceding program year.

(b) The listing shall be prepared in accordance with § 450.314(a) and shall include all federally funded projects authorized or revised to increase obligations in the preceding program year, and shall at a minimum include the TIP information under § 450.324(e)(1) and (4) and identify, for each project, the amount of Federal funds requested in the TIP, the Federal funding that was obligated during the preceding year, and the Federal funding remaining and available for subsequent years.

(c) The listing shall be published or otherwise made available in accordance with the MPO's public participation criteria for the TIP.

§ 450.334 Self-certifications and Federal certifications.

(a) For all MPAs, concurrent with the submittal of the entire proposed TIP to the FHWA and the FTA as part of the STIP approval, the State and the MPO shall certify at least every four years that the metropolitan transportation planning process is being carried out in accordance with all applicable requirements including:

(1) 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart;

(2) In nonattainment and maintenance areas, sections 174 and 176 (c) and (d) of the Clean Air Act, as amended (42 U.S.C. 7504, 7506 (c) and (d)) and 40 CFR part 93;

(3) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d–1) and 49 CFR part 21;

(4) 49 U.S.C. 5332, prohibiting discrimination on the basis of race, color, creed, national origin, sex, or age in employment or business opportunity;

(5) Section 1101(b) of the SAFETEA-LU (Pub. L. 109–59) and 49 CFR part 26 regarding the involvement of disadvantaged business enterprises in USDOT funded projects;

(6) 23 CFR part 230, regarding the implementation of an equal employment opportunity program on Federal and Federal-aid highway construction contracts;

(7) The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and 49 CFR parts 27, 37, and 38;

(8) The Older Americans Act, as amended (42 U.S.C. 6101), prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(9) Section 324 of title 23 U.S.C. regarding the prohibition of discrimination based on gender; and

(10) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and 49 CFR part 27 regarding discrimination against individuals with disabilities.

(b) In TMAs, the FHWA and the FTA jointly shall review and evaluate the transportation planning process for each TMA no less than once every four years to determine if the process meets the requirements of applicable provisions of Federal law and this subpart.

(1) After review and evaluation of the TMA planning process, the FHWA and FTA shall take one of the following actions:

(i) If the process meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process;

(ii) If the process substantially meets the requirements of this part and a TIP has been approved by the MPO and the Governor, jointly certify the transportation planning process subject to cer-

tain specified corrective actions being taken; or

(iii) If the process does not meet the requirements of this part, jointly certify the planning process as the basis for approval of only those categories of programs or projects that the FHWA and the FTA jointly determine, subject to certain specified corrective actions being taken.

(2) If, upon the review and evaluation conducted under paragraph (b)(1)(iii) of this section, the FHWA and the FTA do not certify the transportation planning process in a TMA, the Secretary may withhold up to 20 percent of the funds attributable to the metropolitan planning area of the MPO for projects funded under title 23 U.S.C. and title 49 U.S.C. Chapter 53 in addition to corrective actions and funding restrictions. The withheld funds shall be restored to the MPA when the metropolitan transportation planning process is certified by the FHWA and FTA, unless the funds have lapsed.

(3) A certification of the TMA planning process will remain in effect for four years unless a new certification determination is made sooner by the FHWA and the FTA or a shorter term is specified in the certification report.

(4) In conducting a certification review, the FHWA and the FTA shall provide opportunities for public involvement within the metropolitan planning area under review. The FHWA and the FTA shall consider the public input received in arriving at a decision on a certification action.

(5) The MPO(s), the State(s), and public transportation operator(s) shall be notified of the actions taken under paragraphs (b)(1) and (b)(2) of this section. The FHWA and the FTA will update the certification status of the TMA when evidence of satisfactory completion of a corrective action(s) is provided to the FHWA and the FTA.

§ 450.336 Applicability of NEPA to metropolitan transportation plans and programs.

Any decision by the Secretary concerning a metropolitan transportation plan or TIP developed through the processes provided for in 23 U.S.C. 134, 49 U.S.C. 5303, and this subpart shall

not be considered to be a Federal action subject to review under NEPA.

§ 450.338 Phase-in of new requirements.

(a) Metropolitan transportation plans and TIPs adopted or approved prior to July 1, 2007 may be developed using the TEA-21 requirements or the provisions and requirements of this part.

(b) For metropolitan transportation plans and TIPs that are developed under TEA-21 requirements prior to July 1, 2007, the FHWA/FTA action (*i.e.*, conformity determinations and STIP approvals) must be completed no later than June 30, 2007. For metropolitan transportation plans in attainment areas that are developed under TEA-21 requirements prior to July 1, 2007, the MPO adoption action must be completed no later than June 30, 2007. If these actions are completed on or after July 1, 2007, the provisions and requirements of this part shall take effect, regardless of when the metropolitan transportation plan or TIP were developed.

(c) On and after July 1, 2007, the FHWA and the FTA will take action on a new TIP developed under the provisions of this part, even if the MPO has not yet adopted a new metropolitan transportation plan under the provisions of this part, as long as the underlying transportation planning process is consistent with the requirements in the SAFETEA-LU.

(d) The applicable action (see paragraph (b) of this section) on any amendments or updates to metropolitan transportation plans and TIPs on or after July 1, 2007, shall be based on the provisions and requirements of this part. However, administrative modifications may be made to the metropolitan transportation plan or TIP on or after July 1, 2007 in the absence of meeting the provisions and requirements of this part.

(e) For new TMAs, the congestion management process described in § 450.320 shall be implemented within 18 months of the designation of a new TMA.

APPENDIX A TO PART 450—LINKING THE TRANSPORTATION PLANNING AND NEPA PROCESSES

Background and Overview:

This Appendix provides additional information to explain the linkage between the transportation planning and project development/National Environmental Policy Act (NEPA) processes. It is intended to be non-binding and should not be construed as a rule of general applicability.

For 40 years, the Congress has directed that federally-funded highway and transit projects must flow from metropolitan and statewide transportation planning processes (pursuant to 23 U.S.C. 134-135 and 49 U.S.C. 5303-5306). Over the years, the Congress has refined and strengthened the transportation planning process as the foundation for project decisions, emphasizing public involvement, consideration of environmental and other factors, and a Federal role that oversees the transportation planning process but does not second-guess the content of transportation plans and programs.

Despite this statutory emphasis on transportation planning, the environmental analyses produced to meet the requirements of the NEPA of 1969 (42 U.S.C. 4231 *et seq.*) have often been conducted *de novo*, disconnected from the analyses used to develop long-range transportation plans, statewide and metropolitan Transportation Improvement Programs (STIPs/TIPs), or planning-level corridor/subarea/feasibility studies. When the NEPA and transportation planning processes are not well coordinated, the NEPA process may lead to the development of information that is more appropriately developed in the planning process, resulting in duplication of work and delays in transportation improvements.

The purpose of this Appendix is to change this culture, by supporting congressional intent that statewide and metropolitan transportation planning should be the foundation for highway and transit project decisions. This Appendix was crafted to recognize that transportation planning processes vary across the country. This document provides details on how information, analysis, and products from transportation planning can be incorporated into and relied upon in NEPA documents under existing laws, regardless of when the Notice of Intent has been published. This Appendix presents environmental review as a continuum of sequential study, refinement, and expansion performed in transportation planning and during project development/NEPA, with information developed and conclusions drawn in early stages utilized in subsequent (and more detailed) review stages.

The information below is intended for use by State departments of transportation

(State DOTs), metropolitan planning organizations (MPOs), and public transportation operators to clarify the circumstances under which transportation planning level choices and analyses can be adopted or incorporated into the process required by NEPA. Additionally, the FHWA and the FTA will work with Federal environmental, regulatory, and resource agencies to incorporate the principles of this Appendix in their day-to-day NEPA policies and procedures related to their involvement in highway and transit projects.

This Appendix does not extend NEPA requirements to transportation plans and programs. The Transportation Efficiency Act for the 21st Century (TEA-21) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) specifically exempted transportation plans and programs from NEPA review. Therefore, initiating the NEPA process as part of, or concurrently with, a transportation planning study does not subject transportation plans and programs to NEPA.

Implementation of this Appendix by States, MPOs, and public transportation operators is voluntary. The degree to which studies, analyses, or conclusions from the transportation planning process can be incorporated into the project development/NEPA processes will depend upon how well they meet certain standards established by NEPA regulations and guidance. While some transportation planning processes already meet these standards, others will need some modification.

The remainder of this Appendix document utilizes a “Question and Answer” format, organized into three primary categories (“Procedural Issues,” “Substantive Issues,” and “Administrative Issues”).

I. Procedural Issues:

1. In what format should the transportation planning information be included?

To be included in the NEPA process, work from the transportation planning process must be documented in a form that can be appended to the NEPA document or incorporated by reference. Documents may be incorporated by reference if they are readily available so as to not impede agency or public review of the action. Any document incorporated by reference must be “reasonably available for inspection by potentially interested persons within the time allowed for comment.” Incorporated materials must be cited in the NEPA document and their contents briefly described, so that the reader understands why the document is cited and knows where to look for further information. To the extent possible, the documentation should be in a form such as official actions by the MPO, State DOT, or public transportation operator and/or correspondence within

and among the organizations involved in the transportation planning process.

2. What is a reasonable level of detail for a planning product that is intended to be used in a NEPA document? How does this level of detail compare to what is considered a full NEPA analysis?

For purposes of transportation planning alone, a planning-level analysis does not need to rise to the level of detail required in the NEPA process. Rather, it needs to be accurate and up-to-date, and should adequately support recommended improvements in the statewide or metropolitan long-range transportation plan. The SAFETEA-LU requires transportation planning processes to focus on setting a context and following acceptable procedures. For example, the SAFETEA-LU requires a “discussion of the types of potential environmental mitigation activities” and potential areas for their implementation, rather than details on specific strategies. The SAFETEA-LU also emphasizes consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.

However, the Environmental Assessment (EA) or Environmental Impact Statement (EIS) ultimately will be judged by the standards applicable under the NEPA regulations and guidance from the Council on Environmental Quality (CEQ). To the extent the information incorporated from the transportation planning process, standing alone, does not contain all of the information or analysis required by NEPA, then it will need to be supplemented by other information contained in the EIS or EA that would, in conjunction with the information from the plan, collectively meet the requirements of NEPA. The intent is not to require NEPA studies in the transportation planning process. As an option, the NEPA analyses prepared for project development can be integrated with transportation planning studies (see the response to Question 9 for additional information).

3. What type and extent of involvement from Federal, Tribal, State, and local environmental, regulatory, and resource agencies is needed in the transportation planning process in order for planning-level decisions to be more readily accepted in the NEPA process?

Sections 3005, 3006, and 6001 of the SAFETEA-LU established formal consultation requirements for MPOs and State DOTs to employ with environmental, regulatory, and resource agencies in the development of long-range transportation plans. For example, metropolitan transportation plans now “shall include a discussion of the types of potential environmental mitigation activities and potential areas to carry out these activities, including activities that may have the greatest potential to restore and maintain the environmental functions affected by the

[transportation] plan,” and that these planning-level discussions “shall be developed in consultation with Federal, State, and Tribal land management, wildlife, and regulatory agencies.” In addition, MPOs “shall consult, as appropriate, with State and local agencies responsible for land use management, natural resources, environmental protection, conservation, and historic preservation concerning the development of a long-range transportation plan,” and that this consultation “shall involve, as appropriate, comparison of transportation plans with State conservation plans or maps, if available, or comparison of transportation plans to inventories of natural or historic resources, if available.” Similar SAFETEA-LU language addresses the development of the long-range statewide transportation plan, with the addition of Tribal conservation plans or maps to this planning-level “comparison.”

In addition, section 6002 of the SAFETEA-LU established several mechanisms for increased efficiency in environmental reviews for project decision-making. For example, the term “lead agency” collectively means the U. S. Department of Transportation and a State or local governmental entity serving as a joint lead agency for the NEPA process. In addition, the lead agency is responsible for inviting and designating “participating agencies” (*i.e.*, other Federal or non-Federal agencies that may have an interest in the proposed project). Any Federal agency that is invited by the lead agency to participate in the environmental review process for a project shall be designated as a participating agency by the lead agency unless the invited agency informs the lead agency, in writing, by the deadline specified in the invitation that the invited agency:

(a) Has no jurisdiction or authority with respect to the project; (b) has no expertise or information relevant to the project; and (c) does not intend to submit comments on the project.

Past successful examples of using transportation planning products in NEPA analysis are based on early and continuous involvement of environmental, regulatory, and resource agencies. Without this early coordination, environmental, regulatory, and resource agencies are more likely to expect decisions made or analyses conducted in the transportation planning process to be revisited during the NEPA process. Early participation in transportation planning provides environmental, regulatory, and resource agencies better insight into the needs and objectives of the locality. Additionally, early participation provides an important opportunity for environmental, regulatory, and resource agency concerns to be identified and addressed early in the process, such as those related to permit applications. Moreover, Federal, Tribal, State, and local environmental, regulatory, and resource agencies

are able to share data on particular resources, which can play a critical role in determining the feasibility of a transportation solution with respect to environmental impacts. The use of other agency planning outputs can result in a transportation project that could support multiple goals (transportation, environmental, and community). Further, planning decisions by these other agencies may have impacts on long-range transportation plans and/or the STIP/TIP, thereby providing important input to the transportation planning process and advancing integrated decision-making.

4. What is the procedure for using decisions or analyses from the transportation planning process?

The lead agencies jointly decide, and must agree, on what processes and consultation techniques are used to determine the transportation planning products that will be incorporated into the NEPA process. At a minimum, a robust scoping/early coordination process (which explains to Federal and State environmental, regulatory, and resource agencies and the public the information and/or analyses utilized to develop the planning products, how the purpose and need was developed and refined, and how the design concept and scope were determined) should play a critical role in leading to informed decisions by the lead agencies on the suitability of the transportation planning information, analyses, documents, and decisions for use in the NEPA process. As part of a rigorous scoping/early coordination process, the FHWA and the FTA should ensure that the transportation planning results are appropriately documented, shared, and used.

5. To what extent can the FHWA/FTA provide up-front assurance that decisions and additional investments made in the transportation planning process will allow planning-level decisions and analyses to be used in the NEPA process?

There are no guarantees. However, the potential is greatly improved for transportation planning processes that address the “3-C” planning principles (comprehensive, cooperative, and continuous); incorporate the intent of NEPA through the consideration of natural, physical, and social effects; involve environmental, regulatory, and resource agencies; thoroughly document the transportation planning process information, analysis, and decision; and vet the planning results through the applicable public involvement processes.

6. What considerations will the FHWA/FTA take into account in their review of transportation planning products for acceptance in project development/NEPA?

The FHWA and the FTA will give deference to decisions resulting from the transportation planning process if the FHWA and FTA determine that the planning process is

consistent with the “3-C” planning principles and when the planning study process, alternatives considered, and resulting decisions have a rational basis that is thoroughly documented and vetted through the applicable public involvement processes. Moreover, any applicable program-specific requirements (e.g., those of the Congestion Mitigation and Air Quality Improvement Program or the FTA’s Capital Investment Grant program) also must be met.

The NEPA requires that the FHWA and the FTA be able to stand behind the overall soundness and credibility of analyses conducted and decisions made during the transportation planning process if they are incorporated into a NEPA document. For example, if systems-level or other broad objectives or choices from the transportation plan are incorporated into the purpose and need statement for a NEPA document, the FHWA and the FTA should not revisit whether these are the best objectives or choices among other options. Rather, the FHWA and the FTA review would include making sure that objectives or choices derived from the transportation plan were: Based on transportation planning factors established by Federal law; reflect a credible and articulated planning rationale; founded on reliable data; and developed through transportation planning processes meeting FHWA and FTA statutory and regulatory requirements. In addition, the basis for the goals and choices must be documented and included in the NEPA document. The FHWA/FTA reviewers do not need to review whether assumptions or analytical methods used in the studies are the best available, but, instead, need to assure that such assumptions or analytical methods are reasonable, scientifically acceptable, and consistent with goals, objectives, and policies set forth in long-range transportation plans. This review would include determining whether: (a) Assumptions have a rational basis and are up-to-date and (b) data, analytical methods, and modeling techniques are reliable, defensible, reasonably current, and meet data quality requirements.

II. Substantive Issues

General Issues To Be Considered:

7. What should be considered in order to rely upon transportation planning studies in NEPA?

The following questions should be answered prior to accepting studies conducted during the transportation planning process for use in NEPA. While not a “checklist,” these questions are intended to guide the practitioner’s analysis of the planning products:

- How much time has passed since the planning studies and corresponding decisions were made?

- Were the future year policy assumptions used in the transportation planning process related to land use, economic development, transportation costs, and network expansion consistent with those to be used in the NEPA process?

- Is the information still relevant/valid?
- What changes have occurred in the area since the study was completed?

- Is the information in a format that can be appended to an environmental document or reformatted to do so?

- Are the analyses in a planning-level report or document based on data, analytical methods, and modeling techniques that are reliable, defensible, and consistent with those used in other regional transportation studies and project development activities?

- Were the FHWA and FTA, other agencies, and the public involved in the relevant planning analysis and the corresponding planning decisions?

- Were the planning products available to other agencies and the public during NEPA scoping?

- During NEPA scoping, was a clear connection between the decisions made in planning and those to be made during the project development stage explained to the public and others? What was the response?

- Are natural resource and land use plans being informed by transportation planning products, and vice versa?

Purpose and Need:

8. How can transportation planning be used to shape a project’s purpose and need in the NEPA process?

A sound transportation planning process is the primary source of the project purpose and need. Through transportation planning, State and local governments, with involvement of stakeholders and the public, establish a vision for the region’s future transportation system, define transportation goals and objectives for realizing that vision, decide which needs to address, and determine the timeframe for addressing these issues. The transportation planning process also provides a potential forum to define a project’s purpose and need by framing the scope of the problem to be addressed by a proposed project. This scope may be further refined during the transportation planning process as more information about the transportation need is collected and consultation with the public and other stakeholders clarifies other issues and goals for the region.

23 U.S.C. 139(f), as amended by the SAFETEA-LU Section 6002, provides additional focus regarding the definition of the purpose and need and objectives. For example, the lead agency, as early as practicable during the environmental review process, shall provide an opportunity for involvement by participating agencies and the public in defining the purpose and need for a project.

The statement of purpose and need shall include a clear statement of the objectives that the proposed action is intended to achieve, which may include: (a) Achieving a transportation objective identified in an applicable statewide or metropolitan transportation plan; (b) supporting land use, economic development, or growth objectives established in applicable Federal, State, local, or Tribal plans; and (c) serving national defense, national security, or other national objectives, as established in Federal laws, plans, or policies.

The transportation planning process can be utilized to develop the purpose and need in the following ways:

(a) Goals and objectives from the transportation planning process may be part of the project's purpose and need statement;

(b) A general travel corridor or general mode or modes (e.g., highway, transit, or a highway/transit combination) resulting from planning analyses may be part of the project's purpose and need statement;

(c) If the financial plan for a metropolitan transportation plan indicates that funding for a specific project will require special funding sources (e.g., tolls or public-private financing), such information may be included in the purpose and need statement; or

(d) The results of analyses from management systems (e.g., congestion, pavement, bridge, and/or safety) may shape the purpose and need statement.

The use of these planning-level goals and choices must be appropriately explained during NEPA scoping and in the NEPA document.

Consistent with NEPA, the purpose and need statement should be a statement of a transportation problem, not a specific solution. However, the purpose and need statement should be specific enough to generate alternatives that may potentially yield real solutions to the problem at-hand. A purpose and need statement that yields only one alternative may indicate a purpose and need that is too narrowly defined.

Short of a fully integrated transportation decisionmaking process, many State DOTs develop information for their purpose and need statements when implementing inter-agency NEPA/Section 404 process merger agreements. These agreements may need to be expanded to include commitments to share and utilize transportation planning products when developing a project's purpose and need.

9. Under what conditions can the NEPA process be initiated in conjunction with transportation planning studies?

The NEPA process may be initiated in conjunction with transportation planning studies in a number of ways. A common method is the "tiered EIS," in which the first-tier EIS evaluates general travel corridors, modes, and/or packages of projects at a plan-

ning level of detail, leading to the refinement of purpose and need and, ideally, selection of the design concept and scope for a project or series of projects. Subsequently, second-tier NEPA review(s) of the resulting projects would be performed in the usual way. The first-tier EIS uses the NEPA process as a tool to involve environmental, regulatory, and resource agencies and the public in the planning decisions, as well as to ensure the appropriate consideration of environmental factors in these planning decisions.

Corridor or subarea analyses/studies are another option when the long-range transportation plan leaves open the possibility of multiple approaches to fulfill its goals and objectives. In such cases, the formal NEPA process could be initiated through publication of a NOI in conjunction with a corridor or subarea planning study. Similarly, some public transportation operators developing major capital projects perform the mandatory planning Alternatives Analysis required for funding under FTA's Capital Investment Grant program [49 U.S.C. 5309(d) and (e)] within the NEPA process and combine the planning Alternatives Analysis with the draft EIS.

Alternatives:

10. In the context of this Appendix, what is the meaning of the term "alternatives"?

This Appendix uses the term "alternatives" as specified in the NEPA regulations (40 CFR 1502.14), where it is defined in its broadest sense to include everything from major modal alternatives and location alternatives to minor design changes that would mitigate adverse impacts. This Appendix does not use the term as it is used in many other contexts (e.g., "prudent and feasible alternatives" under Section 4(f) of the Department of Transportation Act, the "Least Environmentally Damaging Practicable Alternative" under the Clean Water Act, or the planning Alternatives Analysis in 49 U.S.C. 5309(d) and (e)).

11. Under what circumstances can alternatives be eliminated from detailed consideration during the NEPA process based on information and analysis from the transportation planning process?

There are two ways in which the transportation planning process can begin limiting the alternative solutions to be evaluated during the NEPA process: (a) Shaping the purpose and need for the project; or (b) evaluating alternatives during planning studies and eliminating some of the alternatives from detailed study in the NEPA process prior to its start. Each approach requires careful attention, and is summarized below.

(a) *Shaping the Purpose and Need for the Project:* The transportation planning process should shape the purpose and need and,

thereby, the range of reasonable alternatives. With proper documentation and public involvement, a purpose and need derived from the planning process can legitimately narrow the alternatives analyzed in the NEPA process. See the response to Question 8 for further discussion on how the planning process can shape the purpose and need used in the NEPA process.

For example, the purpose and need may be shaped by the transportation planning process in a manner that consequently narrows the range of alternatives that must be considered in detail in the NEPA document when:

(1) The transportation planning process has selected a *general travel corridor* as best addressing identified transportation problems and the rationale for the determination in the planning document is reflected in the purpose and need statement of the subsequent NEPA document;

(2) The transportation planning process has selected a *general mode* (e.g., highway, transit, or a highway/transit combination) that accomplishes its goals and objectives, and these documented determinations are reflected in the purpose and need statement of the subsequent NEPA document; or

(3) The transportation planning process determines that the project needs to be funded by *tolls or other non-traditional funding sources* in order for the long-range transportation plan to be fiscally constrained or identifies goals and objectives that can only be met by toll roads or other non-traditional funding sources, and that determination of those goals and objectives is reflected in the purpose and need statement of the subsequent NEPA document.

(b) *Evaluating and Eliminating Alternatives During the Transportation Planning Process:* The evaluation and elimination of alternatives during the transportation planning process can be incorporated by reference into a NEPA document under certain circumstances. In these cases, the planning study becomes part of the NEPA process and provides a basis for screening out alternatives. As with any part of the NEPA process, the analysis of alternatives to be incorporated from the process must have a rational basis that has been thoroughly documented (including documentation of the necessary and appropriate vetting through the applicable public involvement processes). This record should be made available for public review during the NEPA scoping process.

See responses to Questions 4, 5, 6, and 7 for additional elements to consider with respect to acceptance of planning products for NEPA documentation and the response to Question 12 on the information or analysis from the transportation planning process necessary for supporting the elimination of an alter-

native(s) from detailed consideration in the NEPA process.

For instance, under FTA's Capital Investment Grant program, the alternatives considered in the NEPA process may be narrowed in those instances that the planning Alternatives Analysis required by 49 U.S.C. 5309(e) is conducted as a planning study prior to the NEPA review. In fact, the FTA may be able to narrow the alternatives considered in detail in the NEPA document to the No-Build (No Action) alternative and the Locally Preferred Alternative. Alternatives must meet the following criteria if they are deemed sufficiently considered by a planning Alternatives Analysis under FTA's Capital Investment Grant program conducted prior to NEPA without a programmatic NEPA analysis and documentation:

- During the planning Alternatives Analysis, all of the reasonable alternatives under consideration must be fully evaluated in terms of their transportation impacts; capital and operating costs; social, economic, and environmental impacts; and technical considerations;

- There must be appropriate public involvement in the planning Alternatives Analysis;

- The appropriate Federal, State, and local environmental, regulatory, and resource agencies must be engaged in the planning Alternatives Analysis;

- The results of the planning Alternatives Analysis must be documented;

- The NEPA scoping participants must agree on the alternatives that will be considered in the NEPA review; and

- The subsequent NEPA document must include the evaluation of alternatives from the planning Alternatives Analysis.

The above criteria apply specifically to FTA's Capital Investment Grant process. However, for other transportation projects, if the planning process has included the analysis and stakeholder involvement that would be undertaken in a first tier NEPA process, then the alternatives screening conducted in the transportation planning process may be incorporated by reference, described, and relied upon in the project-level NEPA document. At that point, the project-level NEPA analysis can focus on the remaining alternatives.

12. What information or analysis from the transportation planning process is needed in an EA or EIS to support the elimination of an alternative(s) from detailed consideration?

The section of the EA or EIS that discusses alternatives considered but eliminated from detailed consideration should:

(a) Identify any alternatives eliminated during the transportation planning process (this could include broad categories of alternatives, as when a long-range transportation plan selects a general travel corridor based

on a corridor study, thereby eliminating all alternatives along other alignments);

(b) Briefly summarize the reasons for eliminating the alternative; and

(c) Include a summary of the analysis process that supports the elimination of alternatives (the summary should reference the relevant sections or pages of the analysis or study) and incorporate it by reference or append it to the NEPA document.

Any analyses or studies used to eliminate alternatives from detailed consideration should be made available to the public and participating agencies during the NEPA scoping process and should be reasonably available during comment periods.

Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA "purpose and need" can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain "reasonable" after the planning-level analysis must be addressed in the EIS, even when they are not the preferred alternative. When the proposed action evaluated in an EA involves unresolved conflicts concerning alternative uses of available resources, NEPA requires that appropriate alternatives be studied, developed, and described.

Affected Environment and Environmental Consequences:

13. What types of planning products provide analysis of the affected environment and environmental consequences that are useful in a project-level NEPA analysis and document?

The following planning products are valuable inputs to the discussion of the affected environment and environmental consequences (both its current state and future state in the absence of the proposed action) in the project-level NEPA analysis and document:

- Regional development and growth analyses;
- Local land use, growth management, or development plans; and
- Population and employment projections.

The following are types of information, analysis, and other products from the transportation planning process that can be used in the discussion of the affected environment and environmental consequences in an EA or EIS:

- (a) Geographic information system (GIS) overlays showing the past, current, or predicted future conditions of the natural and built environments;
- (b) Environmental scans that identify environmental resources and environmentally sensitive areas;
- (c) Descriptions of airsheds and watersheds;
- (d) Demographic trends and forecasts;

(e) Projections of future land use, natural resource conservation areas, and development; and

(f) The outputs of natural resource planning efforts, such as wildlife conservation plans, watershed plans, special area management plans, and multiple species habitat conservation plans.

However, in most cases, the assessment of the affected environment and environmental consequences conducted during the transportation planning process will not be detailed or current enough to meet NEPA standards and, thus, the inventory and evaluation of affected resources and the analysis of consequences of the alternatives will need to be supplemented with more refined analysis and possibly site-specific details during the NEPA process.

14. What information from the transportation planning process is useful in describing a baseline for the NEPA analysis of indirect and cumulative impacts?

Because the nature of the transportation planning process is to look broadly at future land use, development, population increases, and other growth factors, the planning analysis can provide the basis for the assessment of indirect and cumulative impacts required under NEPA. The consideration in the transportation planning process of development, growth, and consistency with local land use, growth management, or development plans, as well as population and employment projections, provides an overview of the multitude of factors in an area that are creating pressures not only on the transportation system, but on the natural ecosystem and important environmental and community resources. An analysis of all reasonably foreseeable actions in the area also should be a part of the transportation planning process. This planning-level information should be captured and utilized in the analysis of indirect and cumulative impacts during the NEPA process.

To be used in the analysis of indirect and cumulative impacts, such information should:

- (a) Be sufficiently detailed that differences in consequences of alternatives can be readily identified;
- (b) Be based on current data (e.g., data from the most recent Census) or be updated by additional information;
- (c) Be based on reasonable assumptions that are clearly stated; and/or
- (d) Rely on analytical methods and modeling techniques that are reliable, defensible, and reasonably current.

Environmental Mitigation:

15. How can planning-level efforts best support advance mitigation, mitigation banking, and priorities for environmental mitigation investments?

A lesson learned from efforts to establish mitigation banks and advance mitigation

agreements and alternative mitigation options is the importance of beginning inter-agency discussions during the transportation planning process. Development pressures, habitat alteration, complicated real estate transactions, and competition for potential mitigation sites by public and private project proponents can encumber the already difficult task of mitigating for “like” value and function and reinforce the need to examine mitigation strategies as early as possible.

Robust use of remote sensing, GIS, and decision support systems for evaluating conservation strategies are all contributing to the advancement of natural resource and environmental planning. The outputs from environmental planning can now better inform transportation planning processes, including the development of mitigation strategies, so that transportation and conservation goals can be optimally met. For example, long-range transportation plans can be screened to assess the effect of general travel corridors or density, on the viability of sensitive plant and animal species or habitats. This type of screening provides a basis for early collaboration among transportation and environmental staffs, the public, and regulatory agencies to explore areas where impacts must be avoided and identify areas for mitigation investments. This can lead to mitigation strategies that are both more economical and more effective from an environmental stewardship perspective than traditional project-specific mitigation measures.

III. Administrative Issues:

16. Are Federal funds eligible to pay for these additional, or more in depth, environmental studies in transportation planning?

Yes. For example, the following FHWA and FTA funds may be utilized for conducting environmental studies and analyses within transportation planning:

- FHWA planning and research funds, as defined under 23 CFR Part 420 (e.g., Metropolitan Planning (PL), Statewide Planning and Research (SPR), National Highway System (NHS), Surface Transportation Program (STP), and Equity Bonus); and
- FTA planning and research funds (49 U.S.C. 5303 and 49 U.S.C. 5313(b)), urban formula funds (49 U.S.C. 5307), and (in limited circumstances) transit capital investment funds (49 U.S.C. 5309).

The eligible transportation planning-related uses of these funds may include: (a) Conducting feasibility or subarea/corridor needs studies and (b) developing system-wide environmental information/inventories (e.g., wetland banking inventories or standards to identify historically significant sites). Particularly in the case of PL and SPR funds, the proposed expenditure must be closely related to the development of transportation

plans and programs under 23 U.S.C. 134–135 and 49 U.S.C. 5303–5306.

For FHWA funding programs, once a general travel corridor or specific project has progressed to a point in the preliminary engineering/NEPA phase that clearly extends beyond transportation planning, additional in-depth environmental studies must be funded through the program category for which the ultimate project qualifies (e.g., NHS, STP, Interstate Maintenance, and/or Bridge), rather than PL or SPR funds.

Another source of funding is FHWA’s Transportation Enhancement program, which may be used for activities such as: conducting archeological planning and research; developing inventories such as those for historic bridges and highways, and other surface transportation-related structures; conducting studies to determine the extent of water pollution due to highway runoff; and conducting studies to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

The FHWA and the FTA encourage State DOTs, MPOs, and public transportation operators to seek partners for some of these studies from environmental, regulatory, and resource agencies, non-government organizations, and other government and private sector entities with similar data needs, or environmental interests. In some cases, these partners may contribute data and expertise to the studies, as well as funding.

17. What staffing or organizational arrangements may be helpful in allowing planning products to be accepted in the NEPA process?

Certain organizational and staffing arrangements may support a more integrated approach to the planning/NEPA decision-making continuum. In many cases, planning organizations do not have environmental expertise on staff or readily accessible. Likewise, the review and regulatory responsibilities of many environmental, regulatory, and resource agencies make involvement in the transportation planning process a challenge for staff resources. These challenges may be partially met by improved use of the outputs of each agency’s planning resources and by augmenting their capabilities through greater use of GIS and remote sensing technologies (see <http://www.gis.fhwa.dot.gov/> for additional information on the use of GIS). Sharing databases and the planning products of local land use decision-makers and State and Federal environmental, regulatory, and resource agencies also provide efficiencies in acquiring and sharing the data and information needed for both transportation planning and NEPA work.

Additional opportunities such as shared staff, training across disciplines, and (in some cases) reorganizing to eliminate structural divisions between planning and NEPA practitioners may also need to be considered

in order to better integrate NEPA considerations into transportation planning studies. The answers to the following two questions also contain useful information on training and staffing opportunities.

18. How have environmental, regulatory, and resource agency liaisons (Federally- and State DOT-funded positions) and partnership agreements been used to provide the expertise and interagency participation needed to enhance the consideration of environmental factors in the planning process?

For several years, States have utilized Federal and State transportation funds to support focused and accelerated project review by a variety of local, State, Tribal, and Federal agencies. While Section 1309(e) of the TEA-21 and its successor in SAFETEA-LU section 6002 speak specifically to transportation project streamlining, there are other authorities that have been used to fund positions, such as the Intergovernmental Cooperation Act (31 U.S.C. 6505). In addition, long-term, on-call consultant contracts can provide backfill support for staff that are detailed to other parts of an agency for temporary assignments. At last count (as of 2003), 246 positions were being funded. Additional information on interagency funding agreements is available at: <http://environment.fhwa.dot.gov/streaming/igdocs/index.htm>.

Moreover, every State has advanced a variety of stewardship and streamlining initiatives that necessitate early involvement of environmental, regulatory, and resource agencies in the project development process. Such process improvements have: addressed the exchange of data to support avoidance and impact analysis; established formal and informal consultation and review schedules; advanced mitigation strategies; and resulted in a variety of programmatic reviews. Interagency agreements and workplans have evolved to describe performance objectives, as well as specific roles and responsibilities related to new streamlining initiatives. Some States have improved collaboration and efficiency by co-locating environmental, regulatory, and resource and transportation agency staff.

19. What training opportunities are available to MPOs, State DOTs, public transportation operators and environmental, regulatory, and resource agencies to assist in their understanding of the transportation planning and NEPA processes?

Both the FHWA and the FTA offer a variety of transportation planning, public involvement, and NEPA courses through the National Highway Institute and/or the National Transit Institute. Of particular note is the Linking Planning and NEPA Workshop, which provides a forum and facilitated group discussion among and between State DOT, MPO, Federal, Tribal, and State environmental, regulatory, and resource agencies; and FHWA/FTA representatives (at both the

executive and program manager levels) to develop a State-specific action plan that will provide for strengthened linkages between the transportation planning and NEPA processes.

Moreover, the U.S. Fish and Wildlife Service offers Green Infrastructure Workshops that are focused on integrating planning for natural resources ("green infrastructure") with the development, economic, and other infrastructure needs of society ("gray infrastructure").

Robust planning and multi-issue environmental screening requires input from a wide variety of disciplines, including information technology; transportation planning; the NEPA process; and regulatory, permitting, and environmental specialty areas (e.g., noise, air quality, and biology). Senior managers at transportation and partner agencies can arrange a variety of individual training programs to support learning curves and skill development that contribute to a strengthened link of the transportation planning and NEPA processes. Formal and informal mentoring on an intra-agency basis can be arranged. Employee exchanges within and between agencies can be periodically scheduled, and persons involved with professional leadership programs can seek temporary assignments with partner agencies.

IV. Additional Information on this Topic

Valuable sources of information are FHWA's environment website (<http://www.fhwa.dot.gov/environment/index.htm>) and FTA's environmental streamlining website (<http://www.environment.fta.dot.gov>). Another source of information and case studies is NCHRP Report 8-38 (Consideration of Environmental Factors in Transportation Systems Planning), which is available at <http://www4.trb.org/trb/crp.nsf/All+Projects/NCHRP+8-38>. In addition, AASHTO's Center for Environmental Excellence website is continuously updated with news and links to information of interest to transportation and environmental professionals (www.transportation.environment.org).

PART 460—PUBLIC ROAD MILEAGE FOR APPORTIONMENT OF HIGHWAY SAFETY FUNDS

Sec.

460.1 Purpose.

460.2 Definitions.

460.3 Procedures.

AUTHORITY: 23 U.S.C. 315, 402(c); 49 CFR 1.48.

SOURCE: 40 FR 44322, Sept. 26, 1975, unless otherwise noted.

§ 460.1

23 CFR Ch. I (4–1–11 Edition)

§ 460.1 Purpose.

The purpose of this part is to prescribe the policies and procedures followed in identifying and reporting public road mileage for utilization in the statutory formula for the apportionment of highway safety funds under 23 U.S.C. 402(c).

§ 460.2 Definitions.

As used in this part:

(a) *Public road* means any road under the jurisdiction of and maintained by a public authority and open to public travel.

(b) *Public authority* means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality thereof, with authority to finance, build, operate or maintain toll or toll-free highway facilities.

(c) *Open to public travel* means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

(d) *Maintenance* means the preservation of the entire highway, including surfaces, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization.

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

EFFECTIVE DATE NOTE: At 76 FR 12849, Mar. 9, 2011, § 460.2 was amended by revising paragraph (e), effective Apr. 8, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 460.2 Definitions.

* * * * *

(e) *State* means any one of the 50 States, the District of Columbia, Puerto Rico, the

Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. For the purpose of the application of 23 U.S.C. 402 on Indian reservations, *State* and *Governor of a State* include the Secretary of the Interior.

§ 460.3 Procedures.

(a) *General requirements.* 23 U.S.C. 402(c) provides that funds authorized to carry out section 402 shall be apportioned according to a formula based on population and public road mileage of each State. Public road mileage shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State or his designee and subject to the approval of the Federal Highway Administrator.

(b) *State public road mileage.* Each State must annually submit a certification of public road mileage within the State to the Federal Highway Administration Division Administrator by the date specified by the Division Administrator. Public road mileage on Indian reservations within the State shall be identified and included in the State mileage and in computing the State's apportionment.

(c) *Indian reservation public road mileage.* The Secretary of the Interior or his designee will submit a certification of public road mileage within Indian reservations to the Federal Highway Administrator by June 1 of each year.

(d) *Action by the Federal Highway Administrator.* (1) The certification of Indian reservation public road mileage, and the State certifications of public road mileage together with comments thereon, will be reviewed by the Federal Highway Administrator. He will make a final determination of the public road mileage to be used as the basis for apportionment of funds under 23 U.S.C. 402(c). In any instance in which the Administrator's final determination differs from the public road mileage certified by a State or the Secretary of the Interior, the Administrator will advise the State or the Secretary of the Interior of his final determination and the reasons therefor.

(2) If a State fails to submit a certification of public road mileage as required by this part, the Federal Highway Administrator may make a determination of the State's public road mileage for the purpose of apportioning funds under 23 U.S.C. 402(c). The State's public road mileage determined by the Administrator under this subparagraph may not exceed 90 percent of the State's public road mileage utilized in determining the most recent apportionment of funds under 23 U.S.C. 402(c).

PART 470—HIGHWAY SYSTEMS

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APPENDIX D TO SUBPART A OF PART 470—GUIDANCE CRITERIA FOR EVALUATING REQUESTS FOR MODIFICATIONS TO THE NATIONAL HIGHWAYS SYSTEM

Subparts B–C [Reserved]

AUTHORITY: 23 U.S.C. 103(b)(2), 103(c), 134, 135, and 315; and 49 CFR 1.48(b).

SOURCE: 40 FR 42344, Sept. 12, 1975, unless otherwise noted. Redesignated at 41 FR 51396, Nov. 22, 1976.

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SOURCE: 62 FR 33355, June 19, 1997, unless otherwise noted.

§ 470.101 Purpose.

This part sets forth policies and procedures relating to the identification of Federal-aid highways, the functional classification of roads and streets, the designation of urban area boundaries, and the designation of routes on the Federal-aid highway systems.

§ 470.103 Definitions.

Except as otherwise provided in this part, terms defined in 23 U.S.C. 101(a) are used in this part as so defined.

Consultation means that one party confers with another identified party and, prior to taking action(s), considers that party's views.

Cooperation means that the parties involved in carrying out the planning, programming and management systems processes work together to achieve a common goal or objective.

Coordination means the comparison of the transportation plans, programs, and schedules of one agency with related plans, programs, and schedules of other agencies or entities with legal standing, and adjustment of plans, programs, and schedules to achieve general consistency.

Federal-aid highway systems means the National Highway System and the Dwight D. Eisenhower National System of Interstate and Defense Highways (the "Interstate System").

Federal-aid highways means highways on the Federal-aid highway systems and all other public roads not classified as local roads or rural minor collectors.

Governor means the chief executive of the State and includes the Mayor of the District of Columbia.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for the metropolitan planning area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and 49 U.S.C. 5303–5305 must be carried out.

Responsible local officials means—

(1) In urbanized areas, principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization designated by the Governor, or

(2) In rural areas and urban areas not within any urbanized area, principal

elected officials of general purpose local governments.

State means any one of the fifty States, the District of Columbia, Puerto Rico, or, for purposes of functional classification of highways, the Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Marianas.

§ 470.105 Urban area boundaries and highway functional classification.

(a) *Urban area boundaries.* Routes on the Federal-aid highway systems may be designated in both rural and urban areas. Guidance for determining the boundaries of urbanized and nonurbanized urban areas is provided in the FHWA's Functional Classification Guidelines.¹

(b) *Highway functional classification.* (1) The State transportation agency shall have the primary responsibility for developing and updating a state-wide highway functional classification in rural and urban areas to determine functional usage of the existing roads and streets. Guidance criteria and procedures are provided in the FHWA's Functional Classification Guidelines. The State shall cooperate with responsible local officials, or appropriate Federal agency in the case of areas under Federal jurisdiction, in developing and updating the functional classification.

(2) The results of the functional classification shall be mapped and submitted to the Federal Highway Administration (FHWA) for approval and when approved shall serve as the official record for Federal-aid highways and the basis for designation of the National Highway System.

[62 FR 33355, June 19, 1997, as amended at 76 FR 6691, Feb. 8, 2011]

EDITORIAL NOTE: At 74 FR 28442, June 16, 2009, § 470.105(a) was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

§ 470.107 Federal-aid highway systems.

(a) *Interstate System.* (1) The Dwight D. Eisenhower National System of Interstate and Defense Highways (Interstate System) shall consist of

routes of highest importance to the Nation, built to the uniform geometric and construction standards of 23 U.S.C. 109(h), which connect, as directly as practicable, the principal metropolitan areas, cities, and industrial centers, including important routes into, through, and around urban areas, serve the national defense and, to the greatest extent possible, connect at suitable border points with routes of continental importance in Canada and Mexico.

(2) The portion of the Interstate System designated under 23 U.S.C. 103(c)(1)(D)(2) shall not exceed 69,230 kilometers (43,000 miles). Additional Interstate System segments are permitted under the provisions of 23 U.S.C. 103(c)(4) and section 1105(e)(5)(A) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, as amended.

(b) *National Highway System.* (1) The National Highway System shall consist of interconnected urban and rural principal arterials and highways (including toll facilities) which serve major population centers, international border crossings, ports, airports, public transportation facilities, other intermodal transportation facilities and other major travel destinations; meet national defense requirements; and serve interstate and interregional travel. All routes on the Interstate System are a part of the National Highway System.

(2) The National Highway System shall not exceed 286,983 kilometers (178,250 miles).

(3) The National Highway System shall include the Strategic Highway Corridor Network (STRAHNET) and its highway connectors to major military installations, as designated by the Administrator in consultation with appropriate Federal agencies and the States. The STRAHNET includes highways which are important to the United States strategic defense policy and which provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peace time and war time.

(4) The National Highway System shall include all high priority corridors

¹The Functional Classification Guidelines can be viewed at <http://www.fhwa.dot.gov/planning/fctoc.htm>.

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identified in section 1105(c) of the ISTEA.

[62 FR 33355, June 19, 1997, as amended at 76 FR 6691, Feb. 8, 2011]

§470.109 System procedures—General.

(a) The State transportation agency, in consultation with responsible local officials, shall have the responsibility for proposing to the Federal Highway Administration all official actions regarding the designation, or revision, of the Federal-aid highway systems.

(b) The routes of the Federal-aid highway systems shall be proposed by coordinated action of the State transportation agencies where the routes involve State-line connections.

(c) The designation of routes on the Federal-aid highway systems shall be in accordance with the planning process required, pursuant to the provisions at 23 U.S.C. 135, and, in urbanized areas, the provisions at 23 U.S.C. 134(a). The State shall cooperate with local and regional officials. In urbanized areas, the local officials shall act through the metropolitan planning organizations designated for such areas under 23 U.S.C. 134.

(d) In areas under Federal jurisdiction, the designation of routes on the Federal-aid highway systems shall be coordinated with the appropriate Federal agency.

§470.111 Interstate System procedures.

(a) Proposals for system actions on the Interstate System shall include a route description and a statement of justification. Proposals shall also include statements regarding coordination with adjoining States on State-line connections, with responsible local officials, and with officials of areas under Federal jurisdiction.

(b) Proposals for Interstate or future Interstate designation under 23 U.S.C. 103(c)(4)(A) or (B), as logical additions or connections, shall consider the criteria contained in appendix A of this subpart. For designation as a part of the Interstate system, 23 U.S.C. 103(c)(4)(A) requires that a highway meet all the standards of a highway on the Interstate System, be a logical addition or connection to the Interstate System, and have the affirmative rec-

ommendation of the State or States involved. For designation as a future part of the Interstate System, 23 U.S.C. 103(c)(4)(B) requires that a highway be a logical addition or connection to the Interstate System, have the affirmative recommendation of the State or States involved, and have the written agreement of the State or States involved that such highway will be constructed to meet all the standards of a highway on the Interstate System within twenty-five years of the date of the agreement between the FHWA Administrator and the State or States involved. Such highways must also be on the National Highway System.

(c) Routes proposed for Interstate designation under section 332(a)(2) of the NHS Designation Act of 1995 (NHS Act) shall be constructed to Interstate standards and connect to the Interstate System. Proposals shall consider the criteria contained in appendix B of this subpart.

(d) Proposals for Interstate route numbering shall be submitted by the State transportation agency to the Route Numbering Committee of the American Association of State Highway and Transportation Officials.

(e) Signing of corridors federally designated as future Interstate routes can follow the criteria contained in appendix C of this subpart. No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision thereof, shall refer to any highway under 23 U.S.C. 103(c), nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as such highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a part of the Interstate System.

[62 FR 33355, June 19, 1997, as amended at 76 FR 6691, Feb. 8, 2011]

§470.113 National Highway System procedures.

(a) Proposals for system actions on the National Highway System shall include a route description, a statement of justification, and statements of coordination with adjoining States on

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State-line connections, with responsible local officials, and with officials of areas under Federal jurisdiction.

(b) Proposed modifications to the National Highway System shall enhance the national transportation characteristics of the National Highway System and shall follow the criteria listed in § 470.107. Proposals shall also consider the criteria contained in appendix D of this subpart.

§ 470.115 Approval authority.

(a) The Federal Highway Administrator will approve Federal-aid highway system actions involving the designation, or revision, of routes on the Interstate System, including route numbers, future Interstate routes, and routes on the National Highway System.

(b) The Federal Highway Administrator will approve functional classification actions.

APPENDIX A TO SUBPART A OF PART 470—GUIDANCE CRITERIA FOR EVALUATING REQUESTS FOR INTERSTATE SYSTEM DESIGNATIONS UNDER 23 U.S.C. 103(c)(4)(A) AND (B)

Section 103(c)(4)(A) and (B), of title 23, U.S.C., permits States to request the designation of National Highway System routes as parts or future parts of the Interstate System. The FHWA Administrator may approve such a request if the route is a logical addition or connection to the Interstate System and has been, or will be, constructed to meet Interstate standards. The following are the general criteria to be used to evaluate 23 U.S.C. 103(c) requests for Interstate System designations.

1. The proposed route should be of sufficient length to serve long-distance Interstate travel, such as connecting routes between principal metropolitan cities or industrial centers important to national defense and economic development.

2. The proposed route should not duplicate other Interstate routes. It should serve Interstate traffic movement not provided by another Interstate route.

3. The proposed route should directly serve major highway traffic generators. The term “major highway traffic generator” means either an urbanized area with a population over 100,000 or a similar major concentrated land use activity that produces and attracts long-distance Interstate and statewide travel of persons and goods. Typical examples of similar major concentrated land use activities would include a principal industrial

complex, government center, military installation, or transportation terminal.

4. The proposed route should connect to the Interstate System at each end, with the exception of Interstate routes that connect with continental routes at an international border, or terminate in a “major highway traffic generator” that is not served by another Interstate route. In the latter case, the terminus of the Interstate route should connect to routes of the National Highway System that will adequately handle the traffic. The proposed route also must be functionally classified as a principal arterial and be a part of the National Highway System system.

5. The proposed route must meet all the current geometric and safety standards criteria as set forth in 23 CFR part 625 for highways on the Interstate System, or a formal agreement to construct the route to such standards within 25 years must be executed between the State(s) and the Federal Highway Administration. Any proposed exceptions to the standards shall be approved at the time of designation.

6. A route being proposed for designation under 23 U.S.C. 103(c)(4)(B) must have an approved final environmental document (including, if required, a 49 U.S.C. 303(c) [Section 4(f)] approval) covering the route and project action must be ready to proceed with design at the time of designation. Routes constructed to Interstate standards are not necessarily logical additions to the Interstate System unless they clearly meet all of the above criteria.

[40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, as amended at 76 FR 6692, Feb. 8, 2011]

APPENDIX B TO SUBPART A OF PART 470—DESIGNATION OF SEGMENTS OF SECTION 332(a)(2) CORRIDORS AS PARTS OF THE INTERSTATE SYSTEM

The following guidance is comparable to current procedures for Interstate System designation requests under 23 U.S.C. 103(c)(4)(A). All Interstate System additions must be approved by the Federal Highway Administrator. The provisions of section 332(a)(2) of the NHS Act have also been incorporated into the ISTEA as section 1105(e)(5)(A).

1. The request must be submitted through the appropriate FHWA Division Office to the Associate Administrator for Program Development (HEP-10). Comments and recommendations by the division and regional offices are requested.

2. The State DOT secretary (or equivalent) must request that the route segment be added to the Interstate System. The exact location and termini must be specified. If the route segment involves more than one State,

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each affected State must submit a separate request.

3. The request must provide information to support findings that the segment (a) is built to Interstate design standards and (b) connects to the existing Interstate System. The segment should be of sufficient length to provide substantial service to the travelling public.

4. The request must also identify and justify any design exceptions for which approval is requested.

5. Proposed Interstate route numbering for the segment must be submitted to FHWA and the American Association of State Highway and Transportation Officials Route Numbering.

[40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, as amended at 76 FR 6692, Feb. 8, 2011]

APPENDIX C TO SUBPART A OF PART 470—POLICY FOR THE SIGNING AND NUMBERING OF FUTURE INTERSTATE CORRIDORS DESIGNATED BY SECTION 332 OF THE NHS DESIGNATION ACT OF 1995 OR DESIGNATED UNDER 23 U.S.C. 103(c)(4)(B)

POLICY

State transportation agencies are permitted to erect informational Interstate signs along a federally designated future Interstate corridor only after the specific route location has been established for the route to be constructed to Interstate design standards.

CONDITIONS

1. The corridor must have been designated a future part of the Interstate System under section 332(a)(2) of the NHS Designation Act of 1995 or 23 U.S.C. 103(c)(4)(B).

2. The specific route location to appropriate termini must have received Federal Highway (FHWA) environmental clearance. Where FHWA environmental clearance is not required or Interstate standards have been met, the route location must have been publicly announced by the State.

3. Numbering of future Interstate route segments must be coordinated with affected States and be approved by the American Association of State Highway and Transportation Officials and the FHWA at Headquarters. Short portions of a multistate corridor may require use of an interim 3-digit number.

4. The State shall coordinate the location and content of signing near the State line with the adjacent State.

5. Signing and other identification of a future Interstate route segment must not indicate, nor imply, that the route is on the Interstate System.

6. The FHWA Division Office must confirm in advance that the above conditions have been met and approve the general locations of signs.

SIGN DETAILS

1. Signs may not be used to give directions and should be away from directional signs, particularly at interchanges.

2. An Interstate shield may be located on a green informational sign of a few words. For example: Future Interstate Corridor or Future I-00 Corridor.

3. The Interstate shield may not include the word "Interstate."

4. The FHWA Division Office must approve the signs as to design, wording, and detailed location.

[40 FR 42344, Sept. 12, 1975. Redesignated at 41 FR 51396, Nov. 22, 1976, as amended at 76 FR 6692, Feb. 8, 2011]

APPENDIX D TO SUBPART A OF PART 470—GUIDANCE CRITERIA FOR EVALUATING REQUESTS FOR MODIFICATIONS TO THE NATIONAL HIGHWAY SYSTEM

Section 103(b), of title 23, U.S.C., allows the States to propose modifications to the National Highway System (NHS) and authorizes the Secretary to approve such modifications provided that they meet the criteria established for the NHS and enhance the characteristics of the NHS. In proposing modifications under 23 U.S.C. 103(b), the States must cooperate with local and regional officials. In urbanized areas, the local officials must act through the metropolitan planning organization (MPO) designated for such areas under 23 U.S.C. 134. The following guidance criteria should be used by the States to develop proposed modifications to the NHS.

1. Proposed additions to the NHS should be included in either an adopted State or metropolitan transportation plan or program.

2. Proposed additions should connect at each end with other routes on the NHS or serve a major traffic generator.

3. Proposals should be developed in consultation with local and regional officials.

4. Proposals to add routes to the NHS should include information on the type of traffic served (*i.e.*, percent of trucks, average trip length, local, commuter, interregional, interstate) by the route, the population centers or major traffic generators served by the route, and how this service compares with existing NHS routes.

5. Proposals should include information on existing and anticipated needs and any planned improvements to the route.

6. Proposals should include information concerning the possible effects of adding or deleting a route to or from the NHS might

have on other existing NHS routes that are in close proximity.

7. Proposals to add routes to the NHS should include an assessment of whether modifications (adjustments or deletions) to existing NHS routes, which provide similar service, may be appropriate.

8. Proposed modifications that might affect adjoining States should be developed in cooperation with those States.

9. Proposed modifications consisting of connections to major intermodal facilities should be developed using the criteria set forth below. These criteria were used for identifying initial NHS connections to major intermodal terminals. The primary criteria are based on annual passenger volumes, annual freight volumes, or daily vehicular traffic on one or more principal routes that serve the intermodal facility. The secondary criteria include factors which underscore the importance of an intermodal facility within a specific State.

PRIMARY CRITERIA

Commercial Aviation Airports

1. Passengers—scheduled commercial service with more than 250,000 annual enplanements.
2. Cargo—100 trucks per day in each direction on the principal connecting route, or 100,000 tons per year arriving or departing by highway mode.

Ports

1. Terminals that handle more than 50,000 TEUs (a volumetric measure of containerized cargo which stands for twenty-foot equivalent units) per year, or other units measured that would convert to more than 100 trucks per day in each direction. (Trucks are defined as large single-unit trucks or combination vehicles handling freight.)
2. Bulk commodity terminals that handle more than 500,000 tons per year by highway or 100 trucks per day in each direction on the principal connecting route. (If no individual terminal handles this amount of freight, but a cluster of terminals in close proximity to each other does, then the cluster of terminals could be considered in meeting the criteria. In such cases, the connecting route might terminate at a point where the traffic to several terminals begins to separate.)
3. Passengers—terminals that handle more than 250,000 passengers per year or 1,000 passengers per day for at least 90 days during the year.

Truck/Rail

1. 50,000 TEUs per year, or 100 trucks per day, in each direction on the principal connecting route, or other units measured that would convert to more than 100 trucks per day in each direction. (Trucks are defined as

large single-unit trucks or combination vehicles carrying freight.)

Pipelines

1. 100 trucks per day in each direction on the principal connecting route.

Amtrak

1. 100,000 passengers per year (entrainments and detrainments). Joint Amtrak, intercity bus and public transit terminals should be considered based on the combined passenger volumes. Likewise, two or more separate facilities in close proximity should be considered based on combined passenger volumes.

Intercity Bus

1. 100,000 passengers per year (boardings and deboardings).

Public Transit

1. Stations with park and ride lots with more than 500 vehicle parking spaces, or 5,000 daily bus or rail passengers, with significant highway access (*i.e.*, a high percentage of the passengers arrive by cars and buses using a route that connects to another NHS route), or a major hub terminal that provides for the transfer of passengers among several bus routes. (These hubs should have a significant number of buses using a principal route connecting with the NHS.)

Ferries

1. Interstate/international—1,000 passengers per day for at least 90 days during the year. (A ferry which connects two terminals within the same metropolitan area should be considered as local, not interstate.)
2. Local—see public transit criteria above.

SECONDARY CRITERIA

Any of the following criteria could be used to justify an NHS connection to an intermodal terminal where there is a significant highway interface:

1. Intermodal terminals that handle more than 20 percent of passenger or freight volumes by mode within a State;
2. Intermodal terminals identified either in the Intermodal Management System or the State and metropolitan transportation plans as a major facility;
3. Significant investment in, or expansion of, an intermodal terminal; or
4. Connecting routes targeted by the State, MPO, or others for investment to address an existing, or anticipated, deficiency as a result of increased traffic.

PROXIMATE CONNECTIONS

Intermodal terminals, identified under the secondary criteria noted above, may not

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have sufficient highway traffic volumes to justify an NHS connection to the terminal. States and MPOs should fully consider whether a direct connection should be identified for such terminals, or whether being in

the proximity (2 to 3 miles) of an NHS route is sufficient.

Subparts B–C [Reserved]